TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 260.

JAMES B. EAMES AND EDWIN A. COOLEY, PARTNERS UNDER THE FIRM-NAME AND STYLE OF EAMES & COOLEY, APPELLANTS,

vs.

THE HOME INSURANCE COMPANY OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED DECEMBER 18, 1874.

SUPREME COURT OF THE UNITED STATES.

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1 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, district judge of said district, and in the absence of the Hon. Thomas Drummond, judge of the seventh judicial circuit, pro tempore, sole judge of said circuit court, on Monday, the first day of June, at the June term of said court, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-eighth year.

J. A. JONES, *Clerk.*

JAMES B. EAMES AND EDWIN A. COOLEY, PARTNERS under name of Eames and Cooley,
vs.
HOME INSURANCE COMPANY OF NEW YORK. } In chancery.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the sixteenth day of May, in the year of our Lord one thousand eight hundred
2 and seventy-three, came said defendant, by Messrs. Paddock and Ide, and James M. Truitt, esq., its solicitors, and filed in the office of the clerk of the circuit court of the United States for said district an exemplified record of proceedings in the circuit court of Montgomery County, Illinois, with copy of bill, summons, affidavit of Arthur C. Ducat, petition for removal of cause, and bond, which said copy of bill, summons, affidavit of Arthur C. Ducat, petition for removal of cause, and bond are in the words and figures following, to wit:

Record from Montgomery Co. circuit court.

In circuit court, February term, A. D. 1873.

UNITED STATES OF AMERICA,
State of Illinois, Montgomery County, ss:

Pleas before the honorable Horatio M. Vandeveer, judge of the 18th judicial circuit of the State of Illinois, and sole presiding judge of the circuit court of Montgomery County, in the State aforesaid, and at a term thereof begun and held at the court-house in the city of Hillsboro' in said county, on the twenty-fourth day (being the fourth Monday) of February, in the year of our Lord one thousand eight hundred and seventy-three.

3 Present, honorable H. M. Vandeveer, judge of the 18th judicial circuit of the State of Illinois; Ben. C. Johnson, States attorney; William Bowles, sheriff.

Attest:

ROBERT M. VAN DOREN, *Clerk.*

Be it remembered that heretofore, on the 10th day of February, A. D. 1873, there was filed in the office of the clerk of the circuit court within and for the county of Montgomery, and State of Illinois, a bill in chancery for relief, which said bill is in the words and figures following, to wit:

	Original.	Print.
Deposition of A. C. Ducat	171	84
George F. Bissell	179	87
James A. Beach	184	89
Letter from Beach to Ducat	191	92
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J. A. JONES, *Clerk.*

JAMES B. EAMES AND EDWIN A. COOLEY, partners under name of Eames and Cooley,
vs.
HOME INSURANCE COMPANY OF NEW YORK. } In chancery.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the sixteenth day of May, in the year of our Lord one thousand eight hundred
2 and seventy-three, came said defendant, by Messrs. Paddock and Ide, and James M. Truitt, esq., its solicitors, and filed in the office of the clerk of the circuit court of the United States for said district an exemplified record of proceedings in the circuit court of Montgomery County, Illinois, with copy of bill, summons, affidavit of Arthur C. Ducat, petition for removal of cause, and bond, which said copy of bill, summons, affidavit of Arthur C. Ducat, petition for removal of cause, and bond are in the words and figures following, to wit:

Record from Montgomery Co. circuit court.

In circuit court, February term, A. D. 1873.

UNITED STATES OF AMERICA,
State of Illinois, Montgomery County, ss:

Pleas before the honorable Horatio M. Vandeveer, judge of the 18th judicial circuit of the State of Illinois, and sole presiding judge of the circuit court of Montgomery County, in the State aforesaid, and at a term thereof begun and held at the court-house in the city of Hillsboro' in said county, on the twenty-fourth day (being the fourth Monday) of February, in the year of our Lord one thousand eight hundred and seventy-three.

3 Present, honorable H. M. Vandeveer, judge of the 18th judicial circuit of the State of Illinois; Ben. C. Johnson, States attorney; William Bowles, sheriff.

Attest:

ROBERT M. VAN DOREN, *Clerk.*

Be it remembered that heretofore, on the 10th day of February, A. D. 1873, there was filed in the office of the clerk of the circuit court within and for the county of Montgomery, and State of Illinois, a bill in chancery for relief, which said bill is in the words and figures following, to wit:

Bill of complaint.

In circuit court, February term, A. D. 1873, in chancery.

STATE OF ILLINOIS,
Montgomery County:

JAMES B. EAMES AND EDWIN A. COOLEY, PARTNERS doing business under name and style of Eames & Cooley, plaintiffs,
vs.
HOME INSURANCE COMPANY OF THE CITY OF New York, in the State of New York, defendants.

To the honorable the judge of the circuit court of Montgomery County, State of Illinois, in chancery sitting:

4 Plaintiffs herein, humbly complaining of the above named defendants, respectfully showeth:

That the said defendants are a corporation, doing business as insurers against loss by fire in the State of Illinois, making contracts of insurance through and by agents located throughout the State, with a general agent office at Chicago, in the State of Illinois.

That one James A. Beach was the agent of said defendants, whose office and place of business was at Bunker Hill, Macoupin Co., Illinois, and who was legally authorized and empowered to act for and in behalf defendants in making contracts of insurance against loss by fire.

That plaintiffs were the owners and occupiers, and had been for several years prior to the first day of November, A. D. 1872, of a steam flouring-mill fixtures and machinery to operate the same, in the village of Stanton, Macoupin County, State of Illinois, of the value of twelve thousand dollars.

That for two successive years prior to September, A. D. 1872, defendants had been insured on said mill, fixtures, and machinery, to the amount of three thousand five hundred dollars, at 5 per cent. premium; that upon the expiration of the last-named policy, plaintiffs, on or about the first of October, A. D. 1872, made application to said agent,

5 James A. Beach, for contract of insurance and policy on this said mill for another year, for the sum of four thousand dollars, at the rate of 5 per cent. premium, the said James A. Beach being the person with whom contracts were made and policies thereon obtained in the instances above named, and who on those occasions never asked for the premium-money until after the policies were issued and delivered, which policies bore date of the day of the application and reception by the said agent, Beach.

That to this application plaintiffs, after several days, was informed by said Beach that the defendant, in consequence of their losses by the Chicago fire, were asking increased rates, and the rate on plaintiffs' mill, fixtures, and machinery would be 6½ per cent., and that at that rate they, the defendants, would insure plaintiffs' mill, fixtures, and machinery, as applied for, to the amount of four thousand dollars. Upon receiving this information plaintiffs requested Agent Beach to write to the general agent at Chicago on behalf of plaintiffs for a less rate of premium than 6½ per cent.

To this request defendants, by their general agent at Chicago, re-

plied, by letter, dated October 18th, 1872, that they could not go under 6½, meaning that they could not take less than they had previously offered. On the 25th day of October, 1872, plaintiff' wrote to
6 Beach, accepting defendants' offer at 6½ per cent. on four thousand dollars, and made out and sent with such letter of acceptance an application such as said Agent Beach had directed, and which letter of acceptance and application was by the said Beach received as a compliance on the part of plaintiffs to the offer of defendants previous to that time made, and upon the said 25th day of October aforesaid remailed to the general office at Chicago for policy to issue thereon insuring plaintiffs' steam flouring-mill, fixtures, and machinery to the amount of four thousand dollars for one year from date of said application from loss by fire, at the rate of 6½ per cent. premium.

That said letter of acceptance was received at the general office of defendants at Chicago on the 26th of October, A. D. 1872. Plaintiffs further showeth that, on the night of the 28th of October, A. D. 1872, their said steam flouring-mill at Stanton aforesaid was, without their fault or any of their employees, wholly destroyed by fire, resulting in a loss to plaintiffs of at least ten thousand dollars.

That, on the morning of the 29th of Oct., 1872, they gave notice of their loss to the said agent, Jas. A. Beach, and offered to pay the premium on their contract of insurance, and demanded a policy; and also called for an examination and adjustment of their loss.

7 That, on the 13th day of January, A. D. 1873, plaintiff presented said agent, James A. Beach, with proof of their loss, amounting to some twelve thousand dollars, and again offered to pay the premium on four thousand dollars at 6½ per cent., and demanded a policy; said agent refusing to receive the premium or to give policy. Insomuch as the plaintiffs are without just and adequate remedy in a court of law, and only fully relievable in a court of equity, where matters of this kind are fully relievable, humbly ask to be heard before this court, sitting as a court of equity, and to this and pray that the same Home Insurance Company of the city of New York be made defendants to this bill of complaint; that they be summoned, according to the laws of this State and the practice of this honorable court, to answer plaintiff's bill of complaint herein without oath, the oath thereto being hereby expressly waived.

That, upon a hearing of the allegations herein contained, if found to be true, that it be adjudged, ordered, and decreed that said defendants issue policy on their said contract of insurance as herein alleged, and that plaintiff have such other and further relief as shall be just and appertain to a court of equity; plaintiffs, as in duty bound, always
8 praying that justice may be done in the premises.

B. F. BURNETT,
Complainants' Solicitor.

And afterwards, to wit, on the same day, there was issued by the clerk of the circuit court within and for the county and State aforesaid a summons, which said summons was by said clerk delivered to the sheriff of said county and State, which summons is in the words and figures following, to wit:

Summons.

STATE OF ILLINOIS,
Montgomery County, ss:

The people of the State of Illinois to the sheriff of said county, greeting:

We command you to summons the Home Insurance Company of the

city of New York, in the State of New York, if it shall be found in your county, personally to be and appear before the circuit court of Montgomery County, on the first day of the next term thereof, to be holden at the court-house in Hillsboro', in said Montgomery County, on the 4th Monday of February, A. D. 1873, to answer unto James B. Eames & Edwin A. Cooley, partners, doing business under name and style of Eames & Cooley, in their certain bill of complaint filed in the said court, on the chancery side thereof for relief; and have you
9 then and there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness R. M. Van Doren, clerk of said court, and the seal thereof at Hillsboro', this 10th day of February, A. D. 1873.

[L. S.] ROBERT M. VAN DOREN, *Clerk.*

And afterwards, to wit, on the same day, said sheriff returned said writ into the office of said clerk, with the following endorsements:

STATE OF ILLINOIS,
Montgomery County, ss:

I have duly served the within by reading the same to the within-named C. M. Wool, agent of said company, the president of said above company not found in my county, as I am therein commanded.

WILLIAM BOWLES, *Sheriff.*

FEB. 10TH, 1873. Delivered a true copy of within to C. M. Wool, agent of said above company, the president of company not found in my county.

WILLIAM BOWLES, *Sheriff.*

And afterwards, to wit, on the 24th day of February, A. D. 1873, there was filed in the office of said clerk of said court an affidavit; which said affidavit is in the words and figures following, to wit:

10 *Affidavit of Arthur C. Ducat.*

In the circuit court of Montgomery, State of Illinois, in chancery, February term, A. D. 1873.

JAMES B. EAMES AND EDWIN A. COOLEY, partners, doing business under name and style of Eames and Cooley, complainants,
vs.
THE HOME INSURANCE COMPANY OF THE city of New York, in the State of New York, defendants.

STATE OF ILLINOIS,
Cook County, ss:

Arthur C. Ducat, being first duly sworn, on his oath says that he is owner in fee-simple of real estate in said Cook County of the value of over four thousand dollars over and above all incumbrances, and that affiant has and owns, in his own name, within the counties of Cook and Du Page, in said State, real and personal estate of the value, over and above all incumbrances and liable to execution, of more than eight thousand dollars, and further he says not.

ARTHUR C. DUCAT.

Subscribed and sworn this 20th day of February, A. D. 1873, before me.

O. P. DICKINSON,
Notary Public, Cook Co., Illinois.

11 And, to wit, on the same day there was filed in the office of said clerk of said court a petition for removal; which said petition is in the words and figures following, to wit:

Petition for removal.

STATE OF ILLINOIS,
County of Montgomery:

In circuit court thereof, at February term, A. D. 1873.

JAMES B. EAMES AND EDWIN A. COOLEY, partners doing business under name and style of Eames & Cooley, complainants,
vs.
THE HOME INSURANCE COMPANY OF THE city of New York, in the State of New York, defendants. } In chancery.

And now comes said The Home Insurance Company of New York, defendants in said cause, and enter their appearance in said cause by Paddock and Ide and James M. Truitt, their solicitors, and thereupon said defendants show to this honorable court that said complainants were, at the term of the commencement of said suit, ever since have been, and still are citizens of said State of Illinois, and that said defendants were at the time of the commencement of said suit, ever since have been, and still are citizens of said State of New York, and were and are a corporation organized and existing under and by virtue of
12 the laws of said State of New York, having their principal office and place of business at said city of New York. And said defendants further show that the matter of dispute in said suit exceeds the sum and value of five hundred dollars, exclusive of costs, as will appear by reference to the bill of complaint of said complainants filed in said cause, wherein they claim of these defendants the sum of four thousand dollars.

Wherefore the said defendants pray that, in accordance with the act of Congress in such case made and provided, an order may entered in this cause by this honorable court that this cause be removed for trial into the next term of the circuit court of the United States for the southern district of Illinois, to be held at Springfield, in said district, on the first Monday of June, A. D. one thousand eight hundred and seventy-three; and the said defendants offer, as security that they will enter in said United States court on the first day of its said term copies of the process issued against the said defendants in said suit, the bond of these defendants in the penal sum of four thousand (4,000) dollars, conditioned that these defendants will enter said copies as aforesaid, with Arthur C. Ducat, surety.

13 The Home Insurance Company of New York aforesaid, defendants,

By PADDOCK & IDE AND J. M. TRUITT,
Their Solicitors.
And by ARTHUR C. DUCOT, *General Agent.*

STATE OF ILLINOIS,
County of Cook:

Arthur C. Ducot, being duly sworn, on his oath says that he is general agent of the Home Insurance Company of New York, the defendants mentioned in the foregoing petition *mentioned*, and, as such general agent, affiant is authorized to make and subscribe, on behalf of said defendants, the foregoing petition and this affidavit. And further that affiant has read the said petition and that the matters and things therein set forth are true, in substance and in fact; and further he says not.

ARTHUR C. DUCOT.

Subscribed and sworn this 20th day of *of* February, A. D. 1873, before me.

O. P. DICKINSON,
Notary Public, Cook Co., Illinois.

And afterwards, to wit, on the 24th day of February, A. D. 1873, it being one of the days of the regular February term of the Montgomery County circuit court for that year, there was made and entered
14 of record on the records of said court an order; which said order is in the words and figures following, to wit:

Order to remove cause.

JAMES B. EAMES AND EDWIN A. COOLEY, PARTNERS, &c., complainants,
vs.
THE HOME INSURANCE COMPANY OF THE CITY New York, defendant.

Now on this day comes the said defendant, by Paddock, Ide and Truitt, its solicitors, and file their motion herein to have this cause and the record herein certified to the United States court for the southern district of the State of Illinois.

And now comes the said plaintiffs, by B. F. Burnett, their solicitor, and confesses said motion. It is therefore ordered, adjudged, and decreed by this court that this cause be certified to the United States circuit court for the southern district of the State of Illinois.

And afterwards, to wit, on the same day there was filed in the office of said clerk of said court a bond; which said bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that the Home Insurance Company of New York, as principal, and Arthur C. Ducot, of Cook Co., and State of Illinois, as surety, are held and firmly bound unto James B. Eames
15 and Edwin A. Cooley, partners, doing business under the name and style of Eames and Cooley, in the penal sum of four thousand (4,000) dollars, lawful money of the United States, to the payment whereof well and truly to be made to the said obligees, their heirs and assigns and representatives, the said obligors bind themselves, the successors of said principals and the heirs, executors, and administrators of said surety, jointly, severally and firmly by these presents, sealed and dated this 24th day of February, A. D. one thousand eight hundred and seventy-three, (1873.)

Now, the condition of the foregoing is such that, whereas the said James B. Eames and Edwin A. Cooley, partners aforesaid, have heretofore, to wit, on the tenth day of February, A. D. one thousand eight hundred and seventy-three, brought their certain suit in chancery against the said The Home Insurance Company of New York (by the name of The Home Insurance Company of the City of New York, in the State of New York,) in the circuit court of Montgomery County, and State of Illinois, wherein they claim from said defendants the sum of four thousand dollars, besides costs, and wherein said defendants,
16 The Home Insurance Company of New York, have filed their certain petition in said circuit court of Montgomery County, praying that said suit may be removed for trial into the next term of the circuit court of the United States for the southern district of Illinois, to be held at Springfield, in said district, on the first Monday of June, A. D. 1873:

If the said The Home Insurance Company of New York, the petitioners aforesaid and defendants in said cause, upon the granting of the petition aforesaid, shall enter in the said circuit court of the United States, on the first day of its session aforesaid, copies of the process issued against said defendant in said cause, then this obligation to be void; otherwise to be and remain in full force and effect.

In witness whereof the said The Home Insurance Company of New York, defendants aforesaid, have caused these presents to be subscribed by Arthur C. Ducot as their general agent, and the corporate seal of said defendants to be hereto affixed and to be also subscribed and sealed by their said surety.

[L. S.] ARTHUR C. DUCOT, [SEAL.]
General Agent.
ARTHUR C. DUCOT. [SEAL.]

17 I, Robert M. Van Doren, clerk of the circuit court of Montgomery County, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the bill, summons, and sheriff's return on same affidavit, petition, bond, and all orders of said court in a certain cause lately pending in said court, on the chancery side thereof, wherein James B. Eames and Edwin A. Cooley, partners, &c., are plaintiffs, and The Home Insurance Company of New York are defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Hillsboro, this 17th day of March, A. D. 1873.

[L. S.] ROBERT M. VAN DOREN, *Clerk.*

(Endorsed:) Filed May 16th, 1873. J. A. Jones, clerk.

Afterwards, to wit, on the second day of June, in the June term of said circuit court of the United States, of the year aforesaid, the following proceedings were had in said court in said cause, and entered of record, to wit:

18 *Leave to answer.*

JAMES B. EAMES ET AL. }
v. } In chancery.
HOME INSURANCE COMPANY. }

On motion of defendant, by Messrs. Paddock, Ide and Truitt, its solicitors, leave is granted it to answer herein by the first Monday of July next.

And afterwards, to wit, on the twenty-fourth day of said June, of the year aforesaid, came the defendant, by Messrs. Paddock and Ide, its solicitors, and filed in the clerk's office of said circuit court of the United States, its answer herein; which said answer is in the words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA,
State of Illinois, Southern District, ss:

In the circuit court thereof, in chancery.

JAMES B. EAMES AND EDWIN A. COOLEY, partners, doing business under name and style of Eames and Cooley,
vs.
THE HOME INSURANCE COMPANY OF NEW York. } Bill.

19 The answer of said defendants to the bill of complaint in said cause.

These respondents, now and at all times saving and reserving all benefit of exception or otherwise to the bill aforesaid, for answer thereto, answering, say, that it is true that these respondents are a corporation doing business as insurers against loss by fire in said State of Illinois, and are in the habit of making contracts in that behalf and have sundry agents in various parts of said State, and also have a general agent whose name is Arthur C. Ducot, whose office as such general agent is at Chicago in said State, and that said James A. Beach was agent of these respondents at said Bunker Hill, Macoupin County, and State of Illinois; and respondents say that said Beach was authorized to issue certain kinds of policies binding these respondents, to wit, at the time in said bill mentioned; but these respondents utterly deny that at said time or at any other time the said Beach had any authority whatsoever to make a contract or issue a policy or agree to issue a policy for, upon, or touching the steam flouring-mill, fixtures, and machinery in said bill mentioned; but, on the contrary thereof, these respondents say that Ducot, as such general agent, was the
20 only agent or person representing these respondents within the limits of said State of Illinois who had or claimed to have such authority, of which said complainants had, long prior to and at and during the times in said bill mentioned, ample and actual notice.

And these respondents say that said mill and its fixtures and machinery were each and all not a usual and ordinary risk, but were unusual and extraordinary risks, and such as these respondents always required to be authorized at their home office in New York or at their aforesaid Chicago agency, if authorized at all, upon formal written application, diagram, and survey, signed by the party seeking insurance, and that in all such cases the policy of insurance when issued referred to and made part of such policy the aforesaid application, and provided, in substance, that said application and survey should be considered a part of any such contract of insurance and a warranty on the part of the assured, and any false representation or concealment in such application was in such policy, if issued, stipulated to avoid and defeat the

same; whereof said complainants had full notice at the time of such application in said bill mentioned.

21 And respondents, further answering, say that they do not know and do not admit that at the times in said bill mentioned or at any other time the said complainants were the owners and occupiers of the mill, machinery, and fixtures in said bill mentioned, or that the said property was of the value of twelve thousand dollars or any other considerable sum, but these respondents leave said complainants to proof in such matters, if deemed material.

And respondents deny that for two successive years ending in said September, 1872, or thereabouts, said complainants had any such insurance as is claimed and pretended in said bill, and that said insurance expired on or about October 1st of that year; but on the contrary respondents say that said complainants had at no time later than February of that year any insurance on said property or otherwise in the company of these respondents, and that on said first of October, 1872, and long prior thereto, said complainants had utterly ceased to do business with respondents; and there was then no course or usage of dealing on the point of giving credit for premium or otherwise between respondents and said complainants, nor has there been such course

22 or usage or understanding, tacit or express, at any time before or since, nor did said complainants ever pay or offer to pay any premium or other consideration for said supposed insurance in said bill mentioned.

And respondents, further answering, utterly deny that these respondents ever undertook and agreed to insure the said mill, fixtures, and machinery for another year, or for any further period of time, in manner and form, or substantially in manner and form, as set forth in said bill of complaint; and they utterly deny that, at the time of the fire in said bill mentioned, there was any insurance or agreement to insure the property aforesaid by these respondents in favor of said complainants or any one else. And respondents say that it is true that said complainant had made application to the said Ducot, as such general agent, on the subject of effecting insurance on said property, but that long before said fire said application had been refused and denied by said Ducot to said complainants, and all further treaty and negotiation in that behalf dropped and ended; of all which said complainants had full notice, and, as your respondents are informed and believe, at once sent application to other companies for such insurance.

23 And respondents, further answering, say that at the time of said fire, the application in said bill mentioned for insurance at the rates of 5 per cent. sent to said Ducot, by and on behalf of said complainants, had been and still remained refused and denied, and that such refusal was the only answer to such application ever given by these respondents; and further, that these respondents never received any application from said complainants for insurance on said property at the rate of six and one-half per cent., in manner and form as set forth, or substantially in manner and form as set forth in said bill, and never accepted such application, and never agreed to accept the same, or to issue any policy upon such an application or any other covering the *the* loss alleged in said bill, and respondents say that they believe that whatever negotiations were had between respondents and any person as to such matters were had in writing; and, for greater certainty in that behalf, respondents call upon said complainants to produce written evidence of the all'gations in said bill set forth, and respondents will do

the like in respect to the allegations of this answer, or such as these respondents may be called upon to prove at the hearing herein.

24 And respondents further say that the only application ever sent to these respondents by said complainants for insurance, after the expiration of said other insurance as aforesaid, and the only one upon which any insurance would have been affected by said complainants, had these respondents consented to write such insurance as is claimed in said bill, and the only one referred to by said complainants in such negotiations as were had touching insurance upon the property for the time in said bill mentioned, was false and untrue, and a breach of the warranty aforesaid in this, to wit, that in and by said application, to wit, the application asking for such insurance at 5 per cent., said complainants claimed and stated that they owned said premises in fee, subject to a certain mortgage-lien for $6,000.00, and that they then had other insurance thereon to the amount of $4,000.00, ($2,000.00 on buildings, and $2,000.00 on mill machinery,) in the Phœnix, of Hartford, whereas they had no such insurance in such company, and never after procured the same in such or any company, and had then made an incumbrance of lease of said premises as these respondents are informed, which was a serious and material violation of

25 said warranty, and respondents submit that by reason of such false statements in said application, said complainants have no equity as against these respondents such as is claimed in said bill.

And respondents say that neither respondents nor said Ducot has any personal knowledge as to the other matters and things in said bill contained, and so respondents do not and cannot admit the same, but leave said complainants to prove the same if deemed material.

And, having fully answered, respondents pray that they be hence dismissed with their costs, &c.

The Home Insurance Company, of New York,
By J. M. PALMER, PADDOCK & IDE,
Their Solicitors.

J. M. PALMER,
Of Counsel.

(Endorsed:) Filed June 24th, 1873. J. A. Jones, clerk.

Then, afterwards, to wit, on the 11th day of July, the year aforesaid, came the complainants, by Messrs. Burnett, Morrison & Patton,

26 their solicitors, and filed in the clerk's office of the circuit court of the United States their replication to the defendants' answer herein; which said application is in words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA,
Southern District of Illinois:

JAMES B. EAMES & EDWD. A. COOLEY
vs.
HOMES INSURANCE COMPANY OF THE CITY OF New York.

The complainants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of said an-

swer, for replication thereto say that they will aver and prove their said bill to be true, certain, and sufficient to be answered unto, and that the answer of said defendant is uncertain, insufficient, and insufficient to be replied to by these complainants without this, that any other matter or thing whatsoever in said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this complainant is and will be ready to aver and prove as this honorable court shall direct, and hum-
27 bly prays as in and by their bill they have already prayed.

BERNETT, MORRISON & PATTON,
Solicitors.

(Endorsed:) Filed July 11th, A. D. 1873. J. A. Jones, clerk.

And now afterwards, to wit, on the 25th day of February, in the year of our Lord one thousand eight hundred and seventy-four, came again said defendant, by its said solicitors, and filed in said clerk's office of the circuit court of the United States its amended answer herein, which said amended answer is in words and figures following, to wit:

Amended answer.

United States of America, southern district of Illinois, in circuit court thereof. In chancery.

JAS. B. EAMES AND EDWIN A. COOLEY
vs.
THE HOME INSURANCE COMPANY OF NEW York.

The amended answer of said defendants to the bill of complaint's in said cause.

28 The said defendants, by leave of counsel for complainant, first had and obtained, by way of amendment to the answer of said defendant heretofore filed in said cause, further answering, say that there was no contract of insurance between complainants and defendants, as alleged in said bill of complaint, and they say that in and by the written application for insurance, bearing date October 12th, 1872, addressed to these respondents and signed by said complainants, mentioned in said original answer, it was stated and provided that said complainants would answer particularly the questions in said application set forth and sign the same as descriptive of the premises, and forming a part of the contract of insurance, and a warranty on the part of said complainants, and that among other questions in said application were and are the following: "18, ownership. Is the mill owned and operated by the applicant? To which question said complainants endorsed and wrote on said application the following answer, "Yes," thereby meaning and intending that they were owners thereof in fee-simple, and respondents show that they there and then stated verbally to said Beach that they were such owners in fee-simple, and respondents fur-
29 ther say that among said questions in said application and survey was the following, viz: "Is there any other person interrested in the property? If so, state the interest." To which question said complainants answered on said *said* application, as follows, "Yes; as mortgagee, lien on mill to secure payment of sale."

And respondents further answering say that among said questions in said application was the following, viz: "19, incumbrance. Is there any incumbrance on the property? If mortgaged, state the amount." To which question said complainants answered in said application, "Yes; $6,000.00."

And respondents further answering say that among said questions in said application was the following, viz: "Is there any insurance by the mortgagee?" To which question said applicants answered on said application, "No."

And respondents further answering say that in making said answer to said questions said complainants misstated the facts in that behalf, and that said answers so given by them in said application were false and untrue, and known to said complainants to be false and untrue in this, that at the date of said application and warranty the said
30 complainants were not the owners of said mill property, as stated by them; that there was no mortgage of said mill, or mortgagee interrested therein in the manner and to the amount therein set forth, viz, $6,000.00; but on the contrary thereof that said complainants at the date of said application had no deed or other evidence of legal title whatsoever to said mill property, and had no such legal title, and had no title, legal or equitable, whatsoever to said property, save some slight color or claim under a verbal contract made with said Cooley for a sale of said property, upon which there was at that time, as respondents are informed and believe, a sum of money due to the vendors and owners of said property greatly in excess of the *the* said sum of six thousand dollars, and as much as eight thousand dollars, for which last-named sum the vendors of said premises had a lien, not as mortgagee, but as vendors, upon the aforesaid property, as respondents are informed and believe, and as they have learned since the filing of said answer; and they respectfully submit that even if any agreement had been made, as alleged in said bill, which these respondents as in their said orig-
31 inal answer have denied, and still do deny, the said complainants are precluded from any rights at law or in equity as against these defendants, by reason of the false statements aforesaid that the statement of said title and incumbrance so made in such applications was wilfully false and fraudulent, and calculated and designed to mislead these respondents in a very material matter, viz, the amount and value of the interests of said complainants in said property, and the rate of premium to be charged thereon, and the question of insuring said risk at any rate or under any circumstances; and respondents further say that not until the taking of the evidence of one Wesley Best, at Litchfield, in this cause, in December last, did respondents learn of the facts above set forth; and that prior to that time and at the time of the forwarding of the application of said complainants in said bill mentioned, and from that time to the time of the loss by fire in question, respondents & their agents relied upon the statements in said application in regard to such title and incumbrances as being true, and in good faith describing the interests of said complainants in said premises.

32 And your respondents further answering say that they do and will insist that if it be held by this court that the transactions aforesaid relating to said application amount to any contract, it must be deemed a contract subject to all the terms and conditions of the policy in said bill of complaint mentioned, and that one of said conditions was to the effect that the application referred to in said policy should be considered a part of the contract and a warranty; and that any false representation by the assured of the condition, situations, or occupancy

of the property, or any omission to make known every fact material to the risk, or any misrepresentation whatever, either in a written application or otherwise, should avoid said policy; or, if the interest of the assured in the property be not truly stated in the policy, said policy should be void; and it was also conditioned that if the interests of the assured in the property be other than the entire unconditional and sole ownership of the property, for the use and benefit of the assured, it must be so represented to the company, expressed in the written part of the policy, otherwise the policy to be void; and it was further con-
33 ditioned in said policy that the said respondents should not be liable by virtue of said policy, or any renewal thereof, until the premium therefor should be actually paid; and respondents say that all said conditions were violated, and none of them performed by said complainants, and that said complainants before said fire neither paid nor offered to pay such premium, or any part thereof, nor did they obtain nor respondents give any credit in that behalf, and so respondents submit that said risk never attached, nor was said supposed contract in said bill mentioned ever consummated or agreed upon in the minds of the supposed parties thereto; and they pray, as in said original answer, to be hence dismissed with their costs, &c.

PADDOCK & IDE,
Sols. for Defts.

(Endorsed:) Filed Feb'y 25th, A. D. 1874. J. A. Jones, clerk.

Afterwards, to wit, on the 27th day of February, in the January term of said court, in the year last aforesaid, the following
34 further proceedings were had in said court in said cause and entered of record, to wit:

Order for hearing cause.

JAMES B. EAMES ET AL.
v.
HOME INSURANCE COMPANY. } In chancery.

By consent of parties, by their solicitors, this cause is set for hearing on the first Monday of May next. Complainants to close their proofs by the 15th day of April next, and leave to defendant to take testimony thereafter.

Depositions of Wesley Best and Jas. B. Eames, offered in evidence on behalf of complainants.

United States of America, southern district of Illinois, in the circuit court. In chancery.

JAMES B. EAMES ET AL.
vs.
HOME INSURANCE COMPANY OF NEW YORK.

Notice is hereby to the above-named defendant that at the city
35 of Litchfield, Montgomery County, State of Illinois, on the 13th day of March inst., commencing at the hour of ten of the clock forenoon, before Robt. W. McWilliams, U. S. commissioner, at his office in said city of Litchfield, the depositions of Wesley Best, of said city of Litchfield, and James B. Eames, of Carlyle, Clinton County, State of

Illinois, will be taken, to be read in evidence on the hearing of the above-entitled cause.

Dated Litchfield, March 14th, 1874.

B. F. BURNETT,
Solicitor for Complainant.

We acknowledge service of a copy of the above, March 5th, 1874.
JNO. M. & JNO. MAYO PALMER.

In the circuit court, in chancery, for the term 1874.

UNITED STATES OF AMERICA,
Southern District of the State of Illinois, ss:

JAS. B. EAMES ET AL.
vs.
HOME INSURANCE COMPANY, NEW YORK.

The depositions of Wesley Best of Litchfield, Montgomery
36 County, Illinois, and James B. Eames of Carlyle, Clinton County, Illinois, witnesses of lawful age, produced and examined, each upon his corporal oath, on the 13th day of March, A. D. 1874, by me, Robt. McWilliams, United States commissioner for the southern district of the State of Illinois, at my office in Litchfield, in said State, in compliance with notice hereto attached, to be used in a certain suit and matter in controversy now pending and undetermined in the circuit court of the United States of America on behalf of said plaintiff Jas. B. Eames et al., in their suit in chancery in said court against the Home Insurance Company of New York, the defendants.

Deposition of Wesley Best.

The plaintiff introduces Wesley Best as a witness, and defendant objects that his deposition was taken before.

WESLEY BEST, being duly sworn according to law, on oath, to the following interrogatories makes the following answers:

Examined by Mr. Burnett, of counsel for complainants.

(Witness objected to.)

Int. 1. What is your name, age, and place of residence?

Answer. Wesley Best; forty-seven; Litchfield, Montgomery County, Illinois.

Int. 2. What is your occupation?

Ans. Mill-owner.

37 Int. 3. Are you acquainted with Eames & Cooley, plaintiffs in this case, and with their flouring-mill at Stanton? If so, how long?

Answer. I am acquainted with them, and also with their mill. The mill in question, myself and Mr. Sparks built in 1854 and 1855. I have been acquainted with Mr. Cooley more than fifteen years, and with Mr. Eames eight or ten years.

Int. 4. What, if anything, do you know about their title to the said mill-property?

Answer. Myself and Mr. Sparks sold the mill to Mr. Cooley for twelve thousand dollars. They paid six thousand two hundred dollars on it, but we never gave a deed, for the reason that he never wanted one. We mentioned the matter to him several times, but he said he would

call on us when he wanted the deed. We stood ready to make him the deed whenever he called for it.

Int. 5. Are you acquainted with Jas. A. Beach of Bunker Hill, Illinois; and what business relation, if any, did he sustain to defendants in this case?

Answer. I know Mr. Beach, and I understand him to be the local agent of the Home Insurance Company, the defendants.

38 Int. 6. Have you any knowledge that the said James A. Beach knew of the particular situation of complainants' title to said mill-property in controversy? And, if so, state when and where.

(Defendant objects.)

Answer. I don't think I do.

Int. 7. Have you no knowledge that Beach knew anything of their title?

Answer. I am not clear on that point. It has been so long ago, that I am not clear on that.

Int. 8. Were you ever present at any conversation between Eames & Cooley, or either of them, in reference to application for insurance on said mill-property in question? And, if so, state all that was said by and between the parties.

(Defendant objects to question.)

Answer. Mr. Cooley told me at several times that he told Mr. Beach the particulars, just as the mill stood, how much he had paid on it, what he was to give for it, and how the title was; that he understood it all; that was the first insurance.

(Answer objected to as being mere hearsay.)

Int. 9. What, if any, knowledge of the statement last above mentioned having been made to said Beach have you personally or by admission by said Beach?

(Defendant objects to question.)

39 Answer. I ain't clear enough on that to give an answer.

Int. 10. (By E. A. Cooley, who is *is* present.) Do you remember a conversation between yourself and me, about my financial affairs, at the Bunker Hill Bank, about the close of the year 1870, or beginning of 1871?

Answer. I recollect it well.

Int. 11. (By Mr. Burnett.) What was that conversation?

(Question objected to.)

Answer. Well, that conversation was in reference to how Mr. Cooley stood financially, and how the Stanton mill-property stood with him, myself, and Mr. Sparks. Myself and Mr. Cooley told him how much we sold the mill to him for, how much *we* had paid on it, and that he didn't have no deed at that time, but that we stood ready to make him a deed whenever he called for it.

Int. 12. At what time was this conversation, as near as you can remember?

Answer. It was some time after the first insurance; either in 1870 or '71.

Cross-examination by Geo. L. Paddock, esq., defendant's counsel.

Int. 1. Your interview with Mr. Beach on this occasion had ref-

40 erence to some banking accommodations, had it not?

Answer. It was in regard to some banking accommodations for Mr. Cooley, also to let him know how the property stood that the insurance was on; because it was taken out for my benefit and Mrs. Sparks's, and

I thought it proper to let Mr. Beach understand fully how the property stood.

Int. 2. Do you mean to say that you spoke of insurance to Mr. Beach on this occasion? If so, what did you say, or what Cooley say?

Answer. Yes, sir; we spoke of insurance, or the insurance that was already on the mill. As I said before, we told him exactly how the mill stood. As we were interested in the insurance on the mill, we told him all the particulars at that time.

Int. 3. Mr. Beach was a banker at that time, was he not?

Mr. Beach, as I understood, was cashier of the Bunker Hill Bank, and also is at the present time. Whether he has any other interest in the bank I do not know.

Int. 4. What accommodation did Cooley want to get from Beach at that time?

Answer. I don't know as he wanted any accommodation at that time; he wanted to make an arrangement to send bills of lading through
41 that bank and draw money on them.

Int. 5. When did Mr. Cooley go into possession of that mill?

Answer. I will have to go to my books before I can tell that.

Int. 6. What memorandum have you of this contract between Best and Sparks and Cooley.

Answer. We have the payments made on the mill.

Int. 7. How many payments?

Answer. Three, I think. Two or more; I think three. Yes; I know it was three. He paid $4,000 down; $500 at one time, and $1,700 at another.

Int. 8. Had this $1,700 been paid at the time of your interview with Beach spoken of?

Answer. Yes, sir, it was.

Int. 9. Then the whole $6,200 had been paid at that time, had it not?

Answer. Yes, sir, it had.

Int. 10. And nothing has been paid since?

Answer. No, sir.

Int. 11. What do they owe you now?

Answer. Well, there's $5,800.

Int. 12. What were the terms of your payments on the sale?

Answer. I don't recollect the time; but I think it was $4,000 down, and balance to be paid—well, I disremember how long; I do not
42 remember the sum; I have forgot that. I know we were to give them plenty of time. If I were to say, I would four or five years.

Int. 13. What was the rate of interest on these payments?

Answer. Six per cent. interest is my recollection.

Int. 14. Then, at the present time, there is due on that sale $5,800, and interest from the time of sale to the present, is there not?

Answer. I don't consider that there is only $5,800 due; that is all I shall ever claim. I told Mr. Cooley so several years ago—about two years ago.

Int. 15. Yet you have a contract with him for principal and interest, have you not?

Answer. Well, we made a verbal contract, as I have said—$4,000 down and balance to be paid in installments at 6 per cent., but since it became due I told Mr. Cooley if he would pay the principal I would not charge him any interest. The balance due was $5,800.

Int. 16. Is this all that passed between you and Mr. Cooley on the subject of payment at that time?

Answer. Well, yes; it is all that was on that point. We were talking about the mill and about the balance due.

43 Int. 17. Who was present on this occasion?

Answer. Nobody but myself and Mr. Cooley. We were walking down the street toward the mill at the time.

Int. 18. The substance of this talk, then, was, as I understand it, that you said to Cooley if he would pay you up the principal you would throw off the interest; is that it?

Answer. Well, we was talking about the mill. He had not succeeded very well, and I told him if he would pay the principal I wouldn't charge him no interest. I told him that if he would pay me the $5,800, which was the balance of the $12,000, I wouldn't exact any more, when he got able. I told him that if he would pay the balance of the $12,000, which would have been $5,800, that was all I would require of him if ever he got able to pay it.

Int. 18. Has this conversation been fresh in your mind ever since?

Answer. Yes, sir.

Int. 19. Do you mean that you have given it any weight as affecting the account between you and Cooley on the mill purchase? I mean have you regarded this talk with Cooley as changing the amount

44 due on your account for the purchase-money?

Answer. Well, I don't know yet as I understand you. I mean that Mr. Cooley only owes $5,800 on the mill as the balance. That is all I ever expected him to pay since I told him that.

Int. 20. Have you not already testified in this case that this debt on the mill to you was $5,800, and interest from the day of sale to the present time at 10 per cent. per annum?

Answer. I think not, sir. If I have, I have no recollection of it.

Int. 21. Have you a good memory?

Answer. I suppose—moderately, I would say.

Int. 22. When did you first learn that it was desired to take your deposition in this case a second time?

Answer. When Mr. Burnett came back from Springfield, two or three weeks ago, he said it would be necessary to take my deposition and Mr. Eames' again on other points.

Int. 23. Do you remember testifying in this case in your first deposition on the subject of the indebtedness due to you on the mill?

Answer. Yes, sir; I recollect it.

Int. 24. Do you remember what you testified on that subject?

45 Answer. Yes, sir; I think I do.

Int. 25. Do you remember testifying that the rate of interest on the deferred payments was ten per cent.?

Answer. I don't. I thought I said six. I recollect saying that there was $5,800 due on the mill. I recollect testifying that there was $6,200 paid and a balance due of $5,800. That was the verbal contract.

Int. 36. In your former testimony did you mention this interview between yourself and Cooley about throwing off the interest?

Answer. I think not, sir.

Int. 27. Why did you not?

Answer. Well, the question did not call it out, I guess, was the reason. I knew it then just as well as I do now.

Int. 28. Did you not, on your first examination, in reply to the 4th cross-interrogatory, which was, "What did it (meaning the remainder of the purchase-money unpaid on the mill contract) amount to Oct. 12th, 1872?" state, "Well, it would be $6,000 and the interest. I say it would be about six thousand dollars and the interest"?

Answer. I disremember. I suppose I stated that.

Int. 29. Did you not, in the same connection and in the same deposition, testify, "We sold him the mill for $12,000. He paid us
46 $4,000 down, balance to be paid in one, two, and three years, with ten per cent. interest"?

Answer. I presume I did, but I think now was mistaken in the rate per cent. I think now it was six per cent. instead of ten. But I will say that I had not given the rate per cent. any thought, as I had told him that if he would pay the principal I would not charge him any per cent. at all. Me and Mr. Sparks had talked that over several times. After I got the whole interest of the mill, I told Mr. Cooley we would only charge him the $12,000 for the mill. It was mine and Mr. Sparks's agreement among ourselves, and when I got the whole interest I told Mr. Cooley so in person.

Int. 30. Was this in your mind ever since your talk with Cooley, and at the time you testified before in this case?

Answer. Yes, sir; I knew of it.

Int. 31. Was this sale to Cooley your first business dealing with him?

Answer. No, sir.

Int. 32. Had he been in your employ before?

Answer. No, sir; he was never in our employ.

47 Int. 33. What was your business dealing with him before?

Answer. Myself, Mr. Sparks, Jno. Best, and Cooley bought a mill before. Me and Mr. Sparks owned one-half of it and Jno. Best and Cooley owned the other half, and had entire control of it. That mill was in Litchfield.

Int. 34. Was that arrangement subsisting at the time of this trade to Cooley?

Answer. No, sir; it was not.

Int. 35. Who acted as counsel for either party in this trade of the mill in question to Cooley; whether either party took any counsel as to the title or as to the trade in any way?

Answer. No person at all. Myself and Mr. Sparks and Mr. Cooley made the trade. We had no counsel, and he had none as far as I know.

Int. 36. Where is Mr. Sparks?

Answer. Mr. Sparks is at Alton, Madison County, Illinois.

Int. 37. Was he present at the trade with Cooley?

Answer. He was.

WESLEY BEST.

Subscribed & sworn to before me this 13th day of March, A. D. 1874.
[L. S.] ROBT. McWILLIAMS,
U. S. C. for South. Dist. Ills.

48 *Deposition of James B. Eames.*

JAMES B. EAMES, being first duly sworn, on oath deposes and says as follows, to wit:

(Defendant objects to witness's testifying, because his deposition has already been taken.)

Int. 1. What is your name, age, residence, and occupation?

Answer. My name's Jas. B. Eames, one of the complainants; residence, Carlyle, Clinton County, Illinois; age, twenty-eight; and occupation, clerk.

Int. 2. Look on application marked "Exhibit F, R. McW.," and state, if you know, whose application it is.

Answer. (Witness examining paper.) It is Eames and Cooley's application.

Int. 3. Who made that application? Who filled it out? State all the circumstances of the filling it out.

(Defendants object, witness having already gone over the whole ground.)

Answer. This application was partly filled out by Mr. Beach and partly by myself. I signed it.

Int. 4. Who filled out the answer to the question of ownership—question No. 18 on the application?

Answer. I suppose Mr. Beach did. I did not.

49 Int. 5. Did you, or any person in your presence, give *give* Mr. Beach the information on which that answer was made?

Answer. I gave Mr. Beach the information, but he has not answered just as I gave it to him--or, in other words, he answered as I told him, but afterwards it seems as if he has changed it.

Int. 6. What statements, if any, did you make to said Beach about your title to said premises and the amount of the incumbrance thereon, and whether you had or had not a deed to the premises?

Answer. I told Mr. Beach that we had no deed, nor that Mr. Best had no mortgage or deed of trust, but we owed him six thousand dollars on the mill. I told him that the matter stood just as it did when he insured the mill for Mr. Cooley before, and I suppose he understood how that was, and he said he did; and I did not see, or never noticed, how he answered that question. Mr. Beach said to me that there was just simply a lien of about $6,000 against the mill.

Int. 7. Was this all you said to him concerning the ownership of the mill and the incumbrance thereon, at the time of making

50 this application?

Answer. Well, he said to me that the mill, he supposed, was owned by Eames & Cooley. I told him it was. Then the conversation took place as above mention', as near as I can recollect.

Int. 8. You say this filling up of question 18 in application is not in the handwriting of witness. Do you know in whose handwriting it is? and, if so, state.

Answer. It is not mine, and I presume that a portion, or all of it, is Mr. Beach's writing. I did not see him write it.

Int. 9. Whose handwriting is the answer to question 19, incumbrance?

Answer. It is not mine. I presume it is Mr. Beach's.

Int. 10. What kind of incumbrance did you represent to Beach, at the time you made the application for insurance, was on the premises in question?

Answer. I told him there was about six thousand dollars due on the mill; that it was not in the shape of a mortgage, or deed of trust, or in any shape, only an open account, which I presume he understood. I told him or I said to him that I did not know how he could put

51 it in the application. He said yes, he understood it—that it was a lien of $6,000 that was going to Wesley Best.

Int. 11. Did Beach understand what this lien was, and for what? If so, what?

(Question objected to by defendant's counsel.)

Answer. He did, or he said he did. I told him how it was. I told him the matter was just as it was when he insured Mr. Cooley, and he said he knew how it was then.

Int. 12. Was there any statement made at that time, in Beach's presence, how this matter of incumbrance or lien was?

Answer. I disremember. I suppose I stated that.

Int. 29. Did you not, in the same connection and in the same deposition, testify, "We sold him the mill for $12,000. He paid us
46 $4,000 down, balance to be paid in one, two, and three years, with ten per cent. interest"?

Answer. I presume I did, but I think now was mistaken in the rate per cent. I think now it was six per cent. instead of ten. But I will say that I had not given the rate per cent. any thought, as I had told him that if he would pay the principal I would not charge him any per cent. at all. Me and Mr. Sparks had talked that over several times. After I got the whole interest of the mill, I told Mr. Cooley we would only charge him the $12,000 for the mill. It was mine and Mr. Sparks's agreement among ourselves, and when I got the whole interest I told Mr. Cooley so in person.

Int. 30. Was this in your mind ever since your talk with Cooley, and at the time you testified before in this case?

Answer. Yes, sir; I knew of it.

Int. 31. Was this sale to Cooley your first business dealing with him?

Answer. No, sir.

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Answer. No, sir; he was never in our employ.

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Answer. Myself, Mr. Sparks, Jno. Best, and Cooley bought a mill before. Me and Mr. Sparks owned one-half of it and Jno. Best and Cooley owned the other half, and had entire control of it. That mill was in Litchfield.

Int. 34. Was that arrangement subsisting at the time of this trade to Cooley?

Answer. No, sir; it was not.

Int. 35. Who acted as counsel for either party in this trade of the mill in question to Cooley; whether either party took any counsel as to the title or as to the trade in any way?

Answer. No person at all. Myself and Mr. Sparks and Mr. Cooley made the trade. We had no counsel, and he had none as far as I know.

Int. 36. Where is Mr. Sparks?

Answer. Mr. Sparks is at Alton, Madison County, Illinois.

Int. 37. Was he present at the trade with Cooley?

Answer. He was.

WESLEY BEST.

Subscribed & sworn to before me this 13th day of March, A. D. 1874.
[L. S.] ROBT. McWILLIAMS,
U. S. C. for South. Dist. Ills.

48 *Deposition of James B. Eames.*

JAMES B. EAMES, being first duly sworn, on oath deposes and says as follows, to wit:

(Defendant objects to witness's testifying, because his deposition has already been taken.)

Int. 1. What is your name, age, residence, and occupation?

Answer. My name's Jas. B. Eames, one of the complainants; residence, Carlyle, Clinton County, Illinois; age, twenty-eight; and occupation, clerk.

Int. 2. Look on application marked "Exhibit F, R. McW.," and state, if you know, whose application it is.

Answer. (Witness examining paper.) It is Eames and Cooley's application.

Int. 3. Who made that application? Who filled it out? State all the circumstances of the filling it out.

(Defendants object, witness having already gone over the whole ground.)

Answer. This application was partly filled out by Mr. Beach and partly by myself. I signed it.

Int. 4. Who filled out the answer to the question of ownership—question No. 18 on the application?

Answer. I suppose Mr. Beach did. I did not.

49 Int. 5. Did you, or any person in your presence, give *give* Mr. Beach the information on which that answer was made?

Answer. I gave Mr. Beach the information, but he has not answered just as I gave it to him--or, in other words, he answered as I told him, but afterwards it seems as if he has changed it.

Int. 6. What statements, if any, did you make to said Beach about your title to said premises and the amount of the incumbrance thereon, and whether you had or had not a deed to the premises?

Answer. I told Mr. Beach that we had no deed, nor that Mr. Best had no mortgage or deed of trust, but we owed him six thousand dollars on the mill. I told him that the matter stood just as it did when he insured the mill for Mr. Cooley before, and I suppose he understood how that was, and he said he did; and I did not see, or never noticed, how he answered that question. Mr. Beach said to me that there was just simply a lien of about $6,000 against the mill.

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Answer. It is not mine. I presume it is Mr. Beach's.

Int. 10. What kind of incumbrance did you represent to Beach, at the time you made the application for insurance, was on the premises in question?

Answer. I told him there was about six thousand dollars due on the mill; that it was not in the shape of a mortgage, or deed of trust, or in any shape, only an open account, which I presume he understood. I told him or I said to him that I did not know how he could put

51 it in the application. He said yes, he understood it—that it was a lien of $6,000 that was going to Wesley Best.

Int. 11. Did Beach understand what this lien was, and for what? If so, what?

(Question objected to by defendant's counsel.)

Answer. He did, or he said he did. I told him how it was. I told him the matter was just as it was when he insured Mr. Cooley, and he said he knew how it was then.

Int. 12. Was there any statement made at that time, in Beach's presence, how this matter of incumbrance or lien was?

Answer. There was. I told Mr. Beach that we owed Wesley Best about $6,000 of the purchase-money.

Int 13. And was that all the lien or incumbrance there was on the premises?

Answer. Yes, sir, as far as I know.

Int. 14. In whose handwriting is the filling up of the application opposite inquiry No. 20, other insurance, and in what office insured?

Answer. (Witness examining application.) I presume it is Mr. Beach's. It is not mine nor Mr. Cooley's.

Int. 15. In your answer to interrogatory third you say application was partly filled out by you. What portion of said application was filled out by you?

52 Answer. I done none of the writing except the signature, Eames & Cooley.

Int. 16. In the application, opposite the inquiry other insurance, there is written $4,000—$2,000 building, $2,000 on mill-machinery in Phœnix of Hartford. At whose suggestion and instance was that put in?

Answer. I have no recollection anything about it.

Int. 17. Did you make any representations to Beach at the time of the application as to any other insurance on the premises? and, if so, state what.

Answer. I made no representations. I told him I had no insurance, and was applying for insurance of him.

Cross-examination by Mr. Paddock, defendant's counsel:

Int. 1. When you signed this application it had been filled up, had it not?

Answer. I signed two applications; one of them a blank and one of them partly filled up. One of them was a Home application and one was a Phœnix application. I do not recollect which was the blank one.

Int. 2. Was it your expectation and plan to forward several applications at once with uniform statements and representations for

53 the purpose of effecting several concurring policies on this risk?

Answer. I never had had any experience in insurance matters until that day, at which time I told Mr. Beach that I wanted nine thousand dollars insurance, and he said that he would put it in two companies; when I signed the applications, as above stated, and trusted the rest of it to him.

Int. 3. If you were so inexperienced, what led you to go into the details you have mentioned, as to the nature of your title, the nature and amount of Best's incumbrance, and the other particulars you say you stated to Mr. Beach?

Answer. Mr. Beach asked me the questions.

Int. 4. What questions did he ask you; any other than the printed ones?

Answer. He asked me other questions besides the printed ones; but he did not ask me all of the printed ones.

Int. 5. Did he not ask you questions 18, 19, and 20 in the application No. 105, now shown you?

Answer. He asked me the questions 18 and 19, but I don't recollect of him asking me the 20th.

Int. 6. In what respect do you say that Mr. Beach changed the

54 answer to question 18, or in what respect does any one of said answers in your application vary from your statements to Beach?

Answer. The words "as mortgagee" is different from my statement. The figures $6,000 is erased, for what cause I do not know.

Int. 7. Are these all the variations from your statements to Mr. Beach that appear on the application?

Answer. Mr. Beach has written $6,000 lien on mill to secure payment of sale. I told him particularly that the indebtedness or balance due on mill was simply an open account, and I do not know whether he considered it a lien or not. I see has so written it.

Int. 8. Where did this interview between you and Mr. Beach occur?

Answer. At Bunker Hill Bank, Bunker Hill, Illinois.

Int. 9. How long a time did it occupy?

Answer. I should think I was in the bank not over half an hour. I transacted some other business with Mr. Beach, some bank business, during the time.

Int. 10. Who was present?

Answer. I do not recollect whether there was any one in the bank or not. I think there was men passing in and out of the bank most
55 all the time, but I do not know who they were.

Int. 11. What day was it and what time of day?

Answer. It was on or about the 12th of Oct., 1872. I think, between the hours of 10 and 12 o'clock.

J. B. EAMES.

Subscribed and sworn to before me this 13th day of March, A. D. 1874.

[L. S.] R. McWILLIAMS, *U. S. C.*

UNITED STATES OF AMERICA,
Southern District of Illinois:

The above named Robert McWilliams, of Litchfield, Montgomery County, Illinois, a commissioner duly appointed by the annexed commission, to take the depositions of Wesley Best, of Litchfield, Montgomery County, Illinois, and James B. Eames, of Carlyle, Clinton County, Illinois, the witnesses whose names are subscribed to the foregoing depositions, do hereby certify that before the commencement of their several examinations as witnessess in the said suit between James B. Eames et al., plaintiffs, and Home Insurance Company, the defendants, they, the said Wesley Best and James B. Eames, were each
56 duly sworn by me to testify the truth in relation to the matters in controversy between said parties so far as they should be interrogagated concerning the same; that the said depositions were taken at my office in Litchfield, on the 13th day of March, A. D. 1874, and that after each of the said depositions were taken by me as aforesaid, the interrogatories and cross-interrogatories, and the answers thereto by each of said witnesses as written down, were read over to the said Wesley Best and to the said James B. Eames, and that thereupon the first deposition above was subscribed and sworn to by the said Wesley Best and the second deposition above was subscribed and sworn to by the said James B. Eames, at the place and on the day last aforesaid.

[L. S.] R. McWILLIAMS,
Commissioner.

(Endorsed:) Filed March 23d, 1874. J. A. Jones, clerk.

Proof of loss.

To the Home Insurance Company of New York:

On the night of October 28, A. D. 1872, our flouring-mill, in the west part of the town of Stanton, Macoupin County, Ills., was

57 wholly destroyed by fire. We was the owners in fee of said mill, subject to indebtedness of six thousand dollars to Wesley Best; that we were occupying the mill at the time, manufacturing flour, and we do not know of the cause of the fire. We had no other insurance except what we claim to have in your company.

J. B. Eames, of Eames & Cooley, being duly sworn, on his oath says that the foregoing statement is true, to the best of his knowledge an' belief.

J. B. EAMES.

Subscribed & sworn before me this 10th day Jany., A. D. 1873.

I, Hugh Caldwell, a notary public for Stanton, in the county of Macoupin and State of Illinois, and who resides near to the mill in Stanton owned by Eames & Cooley, when the same was burned on the night of the 28th October; and further, am not concerned as a creditor or otherwise; am not related to Eames & Cooley, and that I am acquainted with the character & circumstances, and believe they have by misfortune and without fraud or evil practice sustained loss and damage, in the destruction of their said flouring-mill, to the amount of twelve thousand dollars.

[L. S.] HUGH CALDWELL,
Notary Public.

(Endorsed:) Filed June 1st, 1874. J. A. Jones, clerk.

58 In the circuit court, in chancery.

UNITED STATES OF AMERICA,
Southern District of Illinois:

JAMES B. EAMES ET AL.
vs.
HOME INSURANCE CO., NEW YORK.

The above-named defendant is hereby notified that at Litchfield, Montgomery County, State of Illinois, on the 29th day of December, A. D. 1873, commencing at the hour of ten a. m., before Robert W. McWilliams, commissioner, at his office in said city, the depositions of John H. Bird, of Staunton, James B. Eames, of Carlyle, E. A. Cooley and Wesley Best, of Montgomery, and James A. Beach, of Macoupin, will be taken to be read in evidence on the hearing of said cause, and that you may appear and put such interrogatories as you may deem proper.

B. F. BURNETT,
Solicitor for Complainants.

A copy of the above delivered to us Dec. 8, 1873.
JOHN M. & JOHN MAYO PALMER,
Attys. for Defts.

59 In the circuit court, in chancery, for the January term, A. D. 1874

UNITED STATES OF AMERICA,
Southern District of the State of Illinois, ss:

JAMES B. EAMES ET AL.
vs.
HOME INSURANCE CO., NEW YORK.

The deposition of John H. Bird, of Staunton, and Jas. A. Beach, of Bunker Hill, Macoupin County, Illinois, and Jas. B. Eames, of Carlyle, and Wesley Best, of Montgomery County, Illinois, witnesses, of lawful age, produced, sworn, and examined, each upon his corporal oath, on the 29th day of December, A. D. 1873, by me, Robert McWilliams, United States commissioner for the southern district of the State of Illinois, at my office in Litchfield, in said State, in compliance with the notice hereto attached, to be used in a certain suit and matter in controversy now pending and undetermined in the circuit court of the United States of America, on behalf of said plaintiffs, James B. Eames et al., in their suit in chancery in said court against Home Insurance Company, New York, defendants.

60 *Deposition of James A. Beach.*

The said JAS. A. BEACH, being first duly sworn by me as a witness in the said cause previous to the commencement of this examination to testify the truth in relation to the matters in controversy, so far as he should be interrogated, testified and deposed as follows:

Int. 1. What is your name, age, residence, and occupation?

Answer. My name is James A. Beach; age, thirty-four; residence, Bunker Hill, Macoupin County, Illinois; occupation, banker and insurance agent.

Int. 2. Do you know complainants in this suit? If so, how long have you known them, and what was their occupation and place of business?

Answer. I know the complainants in this suit, and have known them for about three years. At the time I became acquainted with them their occupation was that of millers; their place of business was Staunton, Macoupin County, Illinois.

Int. 3. Do you know defendant'? And, if so, how long have you known them, and what business relation, if any, have you sustained to them? When did this relation commence, and how long continue?

61 Answer. I know defendant', and have known them for ab'ut four years. I have been agent for the company during the time I have known them.

Int. 4. What was your duty as such agent for the defendant?

Answer. My business as agent for defendant was to solicit and receive applications for insurance, make surveys of property to be insured, and to procure from the company policies for the same.

Int. 4½. Were you agent for any other insurance companies? And, if so, what companies; when did such agency commence, and how long continue?

Answer. I was agent for other companies, among them "The Hartford, of Hartford," and "Phœnix, of Hartford." I became agent for these companies about four years ago, and still continue as their agent.

Int. 5. Prior to the month of October, 1872, did you make any contract for insurance with complainants, or either of them? If so, in what

companies, and what was the amount of insurance taken in each company; at what rate per cent.; when did policies issue; what renewals, if any, and date; premium, when and to whom paid? State particularly, and what property was insured.

62 Answer. Mr. Cooley, one of these complainants, made application for insurance about middle of February, A. D. 1870, and policy was issued upon this application, but I made no contract. This insurance was in the "Home, of New York," and "Phœnix, of Hartford." The amount of policy in "Home" (defendant) was thirty-five hundred, and *and* three thousand in "Phœnix." The rate, I think, was five (5) per cent. in both companies. The premium was paid to me, previous to delivering the policy. The property insured was the mills known as "Staunton City Mills." The policy was issued for one year in each compan*ies*, and renewed for one year at the expiration of the first year.

Int. 6. Subsequent to the month of September, 1872, what contracts or negotiations, if any, did you, as agent, make with complainants for insurance on their flouring-mill at Staunton in any insurance company for which you were agent? What, if any, application for insurance was made out by complainants on their said flouring-mill and given to you? To what companies made; amount asked to be insured; rate; and what did you do with such application?

63 Answer. I made no contract; but Eames and Cooley made application for insurance in the "Home, of New York," and the "Phœnix, of Hartford." The amount of insurance asked for in defendant's company was four thousand dollars, and in the "Phœnix" three thousand. The rate, I think, was five and one-half per cent. The application in defendant's company was referred to the general agent at Chicago. The application in the "Phœnix" was referred to the general agent at Cincinnati.

Int. 7. What reply, if any, did you receive from the "Phœnix" and defendants? At what time did you receive such reply, and how did you receive it?

(Defendants object to proof, by parol, of the contents of this letter.)

The application in the "Phœnix" was for insurance on mill-building and mill-machinery. They would not insure on that application, but offered to insure at six (6) per cent. if they would put a certain amount on the boiler and engine. Defendants replied to application by letter, of which the copy No. 2 in Exhibit A is a true copy.

64 Int. 8. How, and in what manner, did you communicate to complainants the result of the aforesaid application, and what did they determine to do in reference thereto as to accepting the terms in said reply mentioned; and was there any understanding between complainants and you about any further negotiations with defendants to take less rates? And, if so, state particularly all that was said and done.

I do not remember distinctly, but think I notified them by mail. At any rate, Mr. Eames came to my office a day or two afterwards and would not accept the terms of the reply of the "Phœnix," and said that the rate in the "Home" was too high. I told him I would write again to the "Home" to see if they would not take a lower rate, as the "Phœnix" had proposed to "write" at six per cent. The copy of letter No. 3 in Exhibit A is a copy of the letter sent.

Int. 9. What reply, if any, did you receive to this request from the defendants?

I received in reply a letter of which copy No. 5 in Exhibit A is a copy.

Int. 10. Did you communicate to complainants the contents of the reply in your last answer mentioned? And, if so, in what manner
65 did you make the communication? If by letter, did you send in said letter an application in place of the one refused by the "Phœnix" for insurance in the "Hartford, of Hartford," for complainants to fill up with answers to the questions therein propounded? If so, what was the amount asked to be insured, and the rate?

I did; but I cannot recollect whether I wrote to them, or whether I told them when Mr. Eames came over to my office at bank. I did not at that time send any application for insurance; but several days afterwards—it might not have been more than three or four, and it might have been a week—I gave Mr. Eames a blank application to fill*ed* for insurance in the "Hartford." The amount to be insured was either three thousand or three thousand five hundred. I do not recollect the rate. Mr. Eames asked me whether I did not represent another company that would take the risk at a lower rate than the "Phœnix" and the "Home." I told him that he might make application, in the "Hartford." (Witness is shown application, marked Exhibit B, and
66 answers: This is the application referred to in this answer, and the ink has the appearance of having been written at first "6" and afterwards changed to "6½.")

Int. 11. What was the rate in said application to Hartford when filled up and sent to general office?

My impression is that it was six per cent.

Int. 12. Has such application the appearance of having been altered in the rate per cent. since it passed out of your hands?

It has the appearance of having been altered. I cannot say when.

Int. 13. Was this application to the Hartford accepted?

It was not.

Int. 14. How, or in what manner, was said application refused?

They required further information in regard to the nature of the incumbrance upon the mill.

Int. 15. Was any rate per cent. named in said reply; and, if so, what was it?

There was; six and a half per cent.

Int. 16. At what time was said reply received; before or after the burning of the mill?

67 Answer. I think the mill burned before got the application back.

Int. 17. Did you communicate to the complainants the information that the "Home" would not take their risk at less than six and a half per cent.? If so, how?

Answer. Yes, sir; I did. I am not certain, but I think Mr. Eames called at my office soon after. I am speaking of the last letter of Ducat, general agent of the "Home" company.

Int. 19. Did they reply to this communication; and, if so, in what manner?

They replied that the rate was too high; that was all that was said about it.

Int. 20. Was this their only reply? Did they never write you letter accepting the "Home" offer at six and a half?

(Question objected to as being oral evidence to prove a writing.)

Answer. This is the only reply made at that time as far as I remember. Well, no, sir; they wrote me a letter inclosing the "Hartford" application, stating that the rate was pretty high, but guess we'll have to stand it.

68 Int. 21. Was the rate mentioned in said letter, the rate of the "Hartford" or the "Home?"

Answer. Didn't say which, as near as I can remember.

Int. 22. How did you understand it?

Answer. Up to this time, I had supposed that they would not take the insurance in the "Home" company; but, after receiving this letter, I supposed that he had changed his mind in regard to the rate, and, after forwarding the "Hartford" application, I wrote to the general agent of the Home Insurance Company to send me a ticket, or permit, to issue policy.

(Witness was now shown a letter by plaintiffs, a copy of which is contained in Exhibit A No. 6.)

Int. 23. Did you receive said letter, and from whom, and in answer to what, and when?

Answer. I received it from Eames & Cooley, inclosing the Hartford application. I could not say when; perhaps the next day or the day after.

Int. 24. What does the "six and a half" in said letter allude to?

(Objected to by defendant.)

69 Answer. I think the application was made out at first at six per cent. and changed to six and a half per cent. before it was completed. It was my impression that it alluded to the application in the letter. I think it alluded to the Hartford policy. I also might say that I supposed he was willing to pay the rate asked by the Home, which was the same as the Hartford, and I afterwards wrote to send a permit to write a policy.

Complainants exhibited a letter marked "Exhibit C," to the introduction of which defendants objected.

(Witness shown letter.)

Int. 25. Whose letter is that, and to whom was it written, and on what occasion?

Answer. It is my letter to Mr. Burnett, in answer to inquiries made concerning facts in this case.

Int. 26. In this letter you write "some time afterwards they wrote me they would pay the six and a half per cent., and I so wrote the company." Now please state who you mean wrote you, and in what company would they pay six and a half per cent.

(Defendants object to question.)

Eames & Cooley wrote me. They did not say which company.

70 Int. 27. Was the letter of inquiry to which you wrote this letter (marked "Exhibit C") concerning any other company than the "Home?"

Answer. That answer there is in reply to what you wrote me in regard to the Home.

Int. 28. Was what you wrote in said letter and what you said about complainants' offering to pay six and a half per cent. in the Home true?

Answer. Of course it was.

Int. 28. Then why do you say, in your answer to 24th interrogatory, that the six and a half per cent. in complainants' letter to you of Oct. 25 alluded to the Hartford application?

Because complainants' letter inclosed the Hartford application and did not mention any company.

Int. 29. How much of the Hartford application was filled out by you and how much by complainants?

It seems to be more than half in my writing, but it was done in Mr. Eames's presence. The balance was made out by Mr. Eames himself.

Int. 30. Did you write after the reception of complainants' letter of Oct. 25, 1872, to the general office for permit to issue policy for complainants; and, if so, is No. 8, Exhibit A, a copy such letter?

71

Answer. I did, and this letter is a copy of the one I wrote.

Int. 31. What, if any, letter did you receive in reply?

Answer. I received a letter from them in reply, of which No. 10 in Exhibit A is a copy.

Int. 32. When did you learn that complainants' mill had been burned; and did you telegraph to the general office notice, and is No. 9, Exhibit A, a copy of such telegram?

Answer. Early the next morning after the fire—perhaps about eight o'clock—I telegraphed to general office notice of the fire, and No. 9, Exhibit A, is a copy of dispatch.

Int. 33. If a policy had been issued by defendants on complainants' application of Oct. 12, what would have been the date of such policy, according to the usage of defendants in issuing policies of insurance?

(Question objected to.)

Answer. I think it would have borne date of 12th October.

Int. 34. What knowledge have you of the loss of complainants by the burning of their mill, by proof made you by complainants or otherwise? State the amount of loss. State also if complainants have offered to pay the premium on their application and have demanded policy. State all of the particulars, the time, place, and amount.

72

(Question objected to.)

Answer. The mill, as near as I can learn, is a total loss. I have heard that it is a total loss. The next day after the burning he, Eames, came in and made the remark, "I suppose you would not take the premium?" As near as I can remember, I told him I could not take it then under the circumstances. Then he came afterwards and made a tender of the premium. The date I cannot give. It was some time afterwards. It might have been a month. It might have been more or less. The tender of the premium was at my office. No amount was mentioned. The premium tendered was on the amount to be insured on that application.

Int. 35. Do you know what interest complainants had in the flouring-mill in question?

Answer. I do not.

73

Int. 36. Whose letter is this, (showing witness letter marked "Exhibit D,") and to whom sent?

Answer. It is a letter from the general agent of the Home Insurance Company, New York, at Chicago, to myself.

Cross-examination:

Int. 1. How far was this mill situated from Bunker Hill?

Answer. About ten miles.

Int. 2. Did you make a personal survey in this case, or had you made such survey at the time of this application of Oct. 12?

Answer. No, sir.

Int. 3. What information, outside of the facts stated in the application, had you as to the nature of the risk, ownership of the property, or other circumstances connected with the transaction?

Answer. I had none.

Int. 4. Was not this a special hazard as distinguished from ordinary risks?

Yes, sir.

Int. 5. What was the nature of your authority with reference
74 to this particular class of risks, viz, flouring-mills? Did you have any authority to write policies or to make contracts of insurance upon this class of risks at that time?

Answer. On risks of this class I had no authority to write policy without a permit from the company.

Int. 6. Did you ever hold yourself out to the public or to either of these complainants as having any greater authority with respect to this class of risks than such as you have stated?

Answer. I did not.

Int. 7. Were the complainants aware, at the time in question, of the nature of your authority, as you have described it, and that you neither had nor claimed any authority beyond what you have described?

Answer. The' were.

Int. 8. The policy, which expired February, 1872, had been issued under authority from the general office upon an application forwarded by you to that office, had it not?

Answer. It had.

Int. 9. I understand you to say that you never at any time made any contract for the insurance claimed by complainants in this suit. Is this correct?

75 Answer. It is.

Int. 10. Was there a form for the permits or tickets conveying authority from the general office for the issuance of policies, and is the printed form now shown you (showing witness paper) the one used for that purpose?

Answer. There was, and it is. Please attach this printed form to deposition as an exhibit in this case.

(Paper attached marked "Exhibit E.")

Int. 11. This was the ticket, then, referred to in your letter of Oct. 28th, to A. C. Ducat, was it not?

Answer. It is.

Int. 12. Did you issue policies on this class of risks without tickets for that purpose from the general agency?

Answer. No, sir.

Int. 13. Then, in the ordinary course of business, after receiving such a ticket as this, you would have taken steps to write the policy? Is that correct?

Answer. Yes, sir.

Int. 14. Would you have delivered such a policy in advance of the payment of premium?

Answer. No, sir.

76 Int. 15. Was there any custom of dealing or usage between complainants and the Home Insurance Company varying this rule of prepayment of the premium?

Answer. Not that I know of.

Int. 16. In a case where the application failed to specify the period for which the insurance was to be written, and the ticket was silent on that subject, at what stage in the dealing would the question of time for which the risk was to run be settled?

Answer. I have never had a case of that kind; but I would say, in answer to the question, that it there was no date to the application and no time mentioned in the ticket, that it would commence from the company.

Int. 17. Take this case in controversy. Is it not true that, up to the

time of the fire in question, nothing had been said to you by the complainants as to the length of time for which they wanted insurance in the Home, and that that was a question which, up to the time of the fire, had not been settled between the parties?

(Objected to.)

If I mistake not, the application states "for one year."

77 Int. 18. Please to look at the paper now shown you, marked "Exhibit F," and state if it is not the application in question in the Home, and whether it is not silent as to the duration of the policy; and state whether the question of the duration of the policy was not an unsettled one, and one that you would have had to settle upon receipt of the ticket from the general agency.

Answer. This is the application, and it is silent as to the duration of the policy. The duration of the policy would have had to be settled upon receipt of the ticket.

Int. 19. Do you know how much insurance complainants were desirous of obtaining on their mill, or what was its insurable value?

Answer. They applied for seven thousand insurance. I do know what its insurable value was.

Int. 20.

Answer. (Question withdrawn.)

Int. 21. What was the total of the three applications?

78 Answer. The three applications amounted to nine thousand dollars, but my understanding was that only seven thousand dollars insurance was applied for. The application of the Phœnix was rejected.

Int. 22. What was the amount of the Phœnix application, and when did you learn of its objection?

Answer. Three thousand, I think, was the amount; I do not know the exact date, I should think it was some time between the 15th and 20th October.

The Phœnix did not write any policy on that application, did it?

Answer. No, sir; it did not.

Int. 23. Eames & Cooley on the 12th of Oct., 1872, had no insurance in the Phœnix upon that property, had they?

Answer. No, sir.

Int. 24. And they had none in the Hartford either, had they, at that time?

Answer. No, sir.

Int. 25. This was the state of affairs from that time up to the time of the fire, was it not?

Answer. Yes, sir.

Int. 26. Did you communicate, or did Eames & Cooley communicate, to the general agency of the Home Insurance Company the fact

79 that neither the Phœnix nor the Hartford had written upon the risk in question.

Answer. I did not; I do not know what the other parties did.

Int. 27. At the time in question did you have, or claim, any authority to give credit for premiums on this transaction with Eames & Cooley?

Answer. No, sir.

Int. 28. The interview at which you communicated the rate of the Home to Mr. Eames was the last verbal communication between you and him prior to the fire, was it not?

Answer. I think it was; yes, sir.

Int. 29. At this interview you told him what you had received from

the general office in response to your communication: "The Phœnix will carry three thousand at six per cent.; will you not do the same?"

Answer. I did; I told him.

Int. 30. Then, it was fully understood, was it not, at this last verbal interview between you and Mr. Eames, that the general office had refused to change the rate from six and a half to six per cent., was it not?

(Question objected to by plaintiffs.)

Answer. It was; yes, sir.

80 Int. 31. And I understand you to say that when you reported this fact to Mr. Eames, he said to you that six and a half was too high. Is that correct?

(Objected to by plaintiffs.)

Answer. Yes.

Int. 32. Did you understand that remark as a dropping of the matter upon his part?

(Objected to.)

Answer. I did, at the time.

Int. 33. Was the matter dropped?

Answer. Nothing more was said until I received Mr. Eames's letter a few days afterwards.

Int. 34. Then I understand you that Mr. Eames's remark that the rate was too high closed the interview between you? Is that correct?

(Question objected to.)

Answer. I think it is; and I so understood it.

Int. 35. Did Mr. Eames retire at that point?

Answer. I cannot remember that he retired immediately; but nothing more was said in regard to the Home policy.

Int. 36. Did this conversation occur at your office at Bunker Hill?

Answer. It did.

Int. 37. Who were present besides yourself and him?

81 Answer. I cannot tell that any one was. The teller of bank was perhaps in the bank, but was not present at our interview.

Int. 38. Mr. Cooley was not there, was he?

Answer. No, sir.

Int. 39. All your talks on this subject were with Mr. Eames, were they not?

Answer. I think they were.

Int. 40. When did you next communicate with Mr. Eames or Eames & Cooley, after the verbal interview of which you have spoken, either verbally or by letter, in regard to insurance in the Home.

Answer. I had no other communication with them that I can now recollect.

Int. 41. Had you letter-press book for copying letters, and did you copy in such book your business letters at the time in question?

Answer. I had none of my insurance business, but sometimes I used one belonging to the bank.

Int. 42. Did you hand to Eames & Cooley the Hartford application referred to *you* by you, or did you send it to them by letter?

Answer. I think I handed it to them.

82 Int. 43. Was Mr. Eames frequently in your office during Oct., 1872?

Answer. He was.

Int. 44. Do you remember the date of his calling there, when you told him that the general office had refused to change the rate to six

per cent., as stated by you. How long was this call after the date you received the information from the general office?

Answer. I cannot tell; I do not remember.

Int. 45. Was it more than two or three days?

Answer. I think not.

Int. 46. Please to look at the "Hartford" application in question and state in whose handwriting is the entry of "$3,000, Home, N. Y., $3,000 in Phœnix, Hartford," and when said entry was inserted, if you know.

Answer. It is in my handwriting, and made, I presume, on the 25th of October, 1872.

Int. 47. Was it made before it was signed by the applicants?

Answer. It was.

Int. 48. Will you explain, if you know, why the applicants stated their insurance in the Home at $3,000 and the Phœnix at the same amount?

83 Answer. I think it must have been an oversight.

Int. 49. Was not this date, 25th October, 1872, inserted by you after the application came back from Eames & Cooley?

Answer. Well, sir, I could not say.

Int. 50. Please to look at the figures on page three of the application "6½," and state in whose writing they are?

Answer. I think it is my writing.

Int. 51. Were they on the application when you received it from Eames & Cooley in the letter of Oct. 25th, to which you have referred?

Answer. I do not remember.

Int. 52. Do you remember making any changes on the face of the application after you received it, in the letter of Oct. 25th?

Answer. I do not remember.

Int. 52. Did you forward the application to the general agent at Chicago as soon as received by you?

Answer. I did.

Int. 53. Has it been in your hands or under your control at any time since you forwarded it to Chicago?

Answer. No, sir.

Int. 54. When did you first hear of an application in the Hart-

84 ford on the property in question?

Answer. Well, I do not remember. I think it was not until after the burning of the mill, but I am not sure.

Int. 55. When did you, or Eames & Cooley, first propose an application for insurance in the Hartford?

Answer. I think about the 25th of October.

Int. 56. When Mr. Eames first spoke to you about insurance, did he speak of obtaining a certain amount of insurance in gross, or did he speak of procuring a certain amount in such and such companies, naming the companies?

Answer. I do not distinctly remember. I think he wanted a certain amount of insurance. I do not remember that specified any particular companies; he asked if the companies he had been insuring in were good; he asked for a larger amount than seven thousand, I remember that. I think he wanted about nine thousand when he first came.

Int. 57. What did Eames say to you, if anything, about St. Louis companies writing his insurance, and when did he say it?

85 Answer. I do not remember that Mr. Eames said much about St. Louis companies; it was the other partner that spoke of that.

Int. 58. What did he say?

Answer. He did not renew his policy at its expiration, February, 1872; he said he could get better rates in St. Louis companies.

Int. 59. Is it not true that the total of the three applications—Home, Phœnix, and Hartford—covered more insurance than you proposed to write on the risk in question, and that the plan of obtaining a Hartford policy was taken up after you understood the Home application to have been dropped by the parties, as you have testified?

Answer. It is true that the total of the three applications was *was* more than we first proposed to write. I understood the Hartford application to be for a lower rate than the Home would carry the risk.

Int. 60. Then, do I understand you to say that you forwarded the application to the Hartford with a view of ascertaining whether
86 the Hartford would write at a lower rate than that mentioned by the Home, as you have stated?

Answer. I think that the Hartford application was first made for six per cent. at the time Mr. Eames was in my office with a view to getting a lower rate; that when the application was returned to me, with a letter stating that six and a half was pretty high, but guessed he'd have to stand it, I think I changed the rate to six and a half per cent. before sending it, feeling very certain that the company would not carry it for less.

Int. 61. Was it your intention to procure insurance for more than seven thousand dollars on the property in question?

Answer. No, sir; it was not.

Int. 62. Then it was not your intention to make use of permits to the full amount covered by the three applications, was it?

Answer. No, sir.

Int. 63. Is it not true that in forwarding your request to the general office of the Home Insurance Company at Chicago, of Oct. 28th, 1872, you acted upon your own responsibility, taking the risk as to acceptance by Eames & Cooley of a policy in case you obtained
87 authority to issue such policy?

(Objected to by plaintiffs as leading.)

Answer. I supposed from Mr. Eames's letter that he would take a policy in the Home company, and so wrote to them to send me a ticket.

Int. 64. This you did understanding Eames & Cooley's letter to refer to the Hartford and not to the Home, did you not?

(Question objected to.)

Answer. They did not say which company, and it might have meant either or both, as I think I told Mr. Eames when I gave him the blank application that I did not think the Hartford would carry for less than the Home.

Int. 65. You have been asked respecting a letter written by you Nov. 13th, 1872, to Mr. Burnett, marked "Exhibit C." State whether the communication from Eames & Cooley, referred to by you in that letter to Mr. Burnett, and your own letter to the Home Insurance Company, also referred to, are not the same letters already in evidence in this case as Nos. 6 and 8 of Exhibit A, respectively?

Answer. Yes, sir; they are.

Direct examination resumed by Mr. Burnett:

88 Int. 1. You say that the Hartford application was sent to complainants at six per cent. and altered after being sent back to you to six and a half. Are you certain of that?

Answer. To the best of my recollection, I did. In the direct exami-

tion I did not remember it, but, after thinking matter over, I feel pretty certain I did.

Int. 2. Then, as the Hartford application only called for rate at six per cent., how came you to understand the expression in complainants' letter of Oct. 25th, "Six and a half per cent. is pretty high, but I guess we will have to stand it," to allude to the rate of six per cent. in the Hartford?

Answer. Well, for this reason: I had told him, when I gave him the application, that I was almost certain the Hartford would not take the risk at that rate, and when they wrote me that they "guessed they would have to stand six and a half per cent." I supposed that they had changed their mind in regard to the Home policy, altho' they did not say so in so many words; also, supposing that they wanted that
89 amount of insurance, and having told them that I thought the Hartford would not carry the rate at six per cent., I thought to make it sure to put it at the rate that they had expressed in their letter.

Int. 3. Did you, or did you not, suppose that complainants were as willing to pay six and a half in Home as in Hartford?

Answer. I supposed they were.

Int. 4. Where was it you told complainants you supposed that the Hartford would ask six and a half, and when?

Answer. It was at the time they were making out the application at my office, about 25th Oct., 1872.

Int 4. How or in what manner was the Hartford application filled up; and why was it not finished in your office where the filling up was begun; and why did you give it to Mr. Eames to take home with him?

Answer. It was filled up by my asking him the questions and writing the answers down as he gave them to me. It was not finished in my office because there were some questions which they could not answer without being at the mill. I gave it to Mr. Eames for the pur-
90 pose of completing the application.

Int. 4. What were the questions in said applications (take that paper and give me the numbers—showing witness Exhibit B) which Mr. Eames could not answer at your office?

Answer. Here is question No. 2, "when built?" and also, "size and number of stories high?" same number; also, question No. 11, question No. 12, and questions No. 16, No. 17, No. 18, which Mr. Eames could not or did not answer.

Int. 5. When, where, and by whom was the alteration of the rate per cent. on the Hartford application from "six" to "six and a half" made?

Answer. I think it was done by myself when the application was returned to me by Messrs. Eames & Cooley.

Int. 16. Had complainants any knowledge of such alteration before you sent it to the general office?

Answer. I presume not; I think not.

Int. 7. What motive or object had you in making the alteration without their knowledge or consent?

Answer. Well, sir, the motive was that I wanted them to have
91 a policy of insurance, and *and* by their letter they did consent to six and a half per cent. They spoke as though willing to pay that amount.

Int. 8. Had complainants at this time received information of the contents of the letter of the general agent of the Home, of the date of Oct. 18, 1872, No. 5 of Exhibit A?

Answer. He did not renew his policy at its expiration, February, 1872; he said he could get better rates in St. Louis companies.

Int. 59. Is it not true that the total of the three applications—Home, Phœnix, and Hartford—covered more insurance than you proposed to write on the risk in question, and that the plan of obtaining a Hartford policy was taken up after you understood the Home application to have been dropped by the parties, as you have testified?

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Answer. No, sir.

Int. 63. Is it not true that in forwarding your request to the general office of the Home Insurance Company at Chicago, of Oct. 28th, 1872, you acted upon your own responsibility, taking the risk as to acceptance by Eames & Cooley of a policy in case you obtained
87 authority to issue such policy?

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(Question objected to.)

Answer. They did not say which company, and it might have meant either or both, as I think I told Mr. Eames when I gave him the blank application that I did not think the Hartford would carry for less than the Home.

Int. 65. You have been asked respecting a letter written by you Nov. 13th, 1872, to Mr. Burnett, marked "Exhibit C." State whether the communication from Eames & Cooley, referred to by you in that letter to Mr. Burnett, and your own letter to the Home Insurance Company, also referred to, are not the same letters already in evidence in this case as Nos. 6 and 8 of Exhibit A, respectively?

Answer. Yes, sir; they are.

Direct examination resumed by Mr. Burnett:

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Answer. To the best of my recollection, I did. In the direct exami-

tion I did not remember it, but, after thinking matter over, I feel pretty certain I did.

Int. 2. Then, as the Hartford application only called for rate at six per cent., how came you to understand the expression in complainants' letter of Oct. 25th, "Six and a half per cent. is pretty high, but I guess we will have to stand it," to allude to the rate of six per cent. in the Hartford?

Answer. Well, for this reason: I had told him, when I gave him the application, that I was almost certain the Hartford would not take the risk at that rate, and when they wrote me that they "guessed they would have to stand six and a half per cent." I supposed that they had changed their mind in regard to the Home policy, altho' they did not say so in so many words; also, supposing that they wanted that
89 amount of insurance, and having told them that I thought the Hartford would not carry the rate at six per cent., I thought to make it sure to put it at the rate that they had expressed in their letter.

Int. 3. Did you, or did you not, suppose that complainants were as willing to pay six and a half in Home as in Hartford?

Answer. I supposed they were.

Int. 4. Where was it you told complainants you supposed that the Hartford would ask six and a half, and when?

Answer. It was at the time they were making out the application at my office, about 25th Oct., 1872.

Int 4. How or in what manner was the Hartford application filled up; and why was it not finished in your office where the filling up was begun; and why did you give it to Mr. Eames to take home with him?

Answer. It was filled up by my asking him the questions and writing the answers down as he gave them to me. It was not finished in my office because there were some questions which they could not answer without being at the mill. I gave it to Mr. Eames for the pur-
90 pose of completing the application.

Int. 4. What were the questions in said applications (take that paper and give me the numbers—showing witness Exhibit B) which Mr. Eames could not answer at your office?

Answer. Here is question No. 2, "when built?" and also, "size and number of stories high?" same number; also, question No. 11, question No. 12, and questions No. 16, No. 17, No. 18, which Mr. Eames could not or did not answer.

Int. 5. When, where, and by whom was the alteration of the rate per cent. on the Hartford application from "six" to "six and a half" made?

Answer. I think it was done by myself when the application was returned to me by Messrs. Eames & Cooley.

Int. 16. Had complainants any knowledge of such alteration before you sent it to the general office?

Answer. I presume not; I think not.

Int. 7. What motive or object had you in making the alteration without their knowledge or consent?

Answer. Well, sir, the motive was that I wanted them to have
91 a policy of insurance, and *and* by their letter they did consent to six and a half per cent. They spoke as though willing to pay that amount.

Int. 8. Had complainants at this time received information of the contents of the letter of the general agent of the Home, of the date of Oct. 18, 1872, No. 5 of Exhibit A?

Answer. They had.

Int. 9. And had they declined to pay the rate per cent. therein mentioned?

Answer. They replied that the rate was too high, and nothing more was said about it that I can remember.

Int. 10. Then, as complainants were not willing to pay six and a half in the Home, what reason had you to suppose that they would take a risk in the Hartford at that rate?

Answer. They changed their mind, and wrote afterwards that they were willing to stand six and a half per cent.

(Witness asks leave to strike out the words "several days" in this answer, and say "wrote afterwards.")

Int. 11. As, at that time, no application for insurance was pending by complainants in any company of which you were agent, for a rate
92 as high as six and a half per cent., except in the Home, why did you not understand and suppose their expression "six and a half," in their letter of Oct. 25, alluded to no company but the Home?

Answer. Because they wanted more insurance than what they had applied for in the Home company.

Int. 12. Then, as the Hartford application was for two thousand only, and you knew complainants wanted more insurance and the Home was willing to insure at six and a half, why did you not suppose the "six and a half" expression in said letter applied to the Home as well as the Hartford?

Answer. I have already said that I supposed that it did. I supposed that it alluded to both the Home and the Hartford.

Art. 13. Was this supposition, that said expression "six and a half" applied to the Home as well as to the Hartford, the reason or motive of your sending letter No. 8, Exhibit A?

Answer. Yes, sir; I had no other. I supposed that he would take it, though he did not say so.

93 Int. 14. Although complainants, in their letter, wherein they speak of the rate "six and a half per cent.," did not use the*ir* word Home, did you not understand their meaning as well and as clearly as if the word Home had been used in said letter?

Answer. I understood it this far, that I supposed that if I sent for a Home policy that they would take it.

Int. 15. The day after the fire, did you have any conversation with complainants concerning their application for insurance in the Home; and in this conversation was the letter of Oct. 25th mentioned; and, if so, was there any claim by you that it applied to any other office than the Home?

(Defendants object to question.)

Answer. They had conversation with me concerning insurance in all three companies. Mr. Eames came into my office the day after the fire, and I think I remarked to him as he came in, "Mr. Eames, have they burned you out, too," alluding to a mill that been burned previously. Then he said, "Yes; have I got any insurance?" I told him that
94 I was afraid it was a little doubtful. He said he was afraid so too, and "next time I will be in time and will know when I am insured." He then asked me what I had done, and I answered him, that the Hartford application had been received at the general office and that they had written before giving permission to write policy to inquire about the nature of the incumbrance on the mill property. In reply to their letter of inquiry, I answered them that the mill had burned. I also told Mr. Eames that I had written for a Home policy and that

I had not heard from the company. He also asked me about the Phœnix. He wanted to know what the Phœnix had done. The letter of Oct. 25th was not alluded to in that conversation.

Int. 16. I will ask who was present at that conversation?

Answer. I think Mr. John Bird was present.

Int. 17. Are you sure that in the above conversation there was nothing said about the reception of the letter of 25th of October, and of sending to the general office of the Home on receipt of said
95 letter for a policy?

Answer. I do not remember that it was mentioned.

Int. 18. You say that in the application to the Hartford the object was get less rates; how come you, then, to send application to the Hartford at the highest rates named, without consent or knowledge of complainants?

Answer. Well, in the first place, I felt satisfied that the company would not write for a less rate, and on receiving his letter stating that he "guessed he would have to stand six and a half," and also supposing that he wanted to make sure of getting a policy, I changed the rate to six and a half. I will say further that I did not suppose that I was doing it without his consent.

Int. 19. As the letter of 25th Oct., 1872, from complainants did not mention the Hartford Company, and as the Hartford application was then before the writer at the rate of six per cent., what reason had witness to suppose that the expression therein of "six and a half per cent." referred to the Hartford application?

(Question objected to.)

96 Answer. Because I told Mr. Eames when I gave him the application that I did not suppose that they would take it for that; and when he wrote that "he guessed he would have to stand six and a half," I thought, to save trouble of having the application returned, that I would make a sure thing in the first place.

Int. 20. You say that the figures "6½," on the third page of application, and adding one-half to the 6 per cent. on first page, making rate six and a half, is in your handwriting, and was on this application when mailed to the general office, at Chicago?

Answer. I think the "6½" on the third page and "½" on the first page are in my handwriting, and that both were on the application before it was sent to the general office, at Chicago.

Int. 21. Whose handwriting, if you know, is on the back of said application, at the bottom, opposite the words, "approved," "by," and "rate," in print?

Answer. I do not know whose it is.

Int. 22. Was the writing last alluded to on the application when it left your office?

97 Answer. It was not.

Int. 23. Did you ever tell any person before here testifying, that the letter of 25th of Oct., 1872, was understood by you as referring to the Hartford application; if so, when and where, and whom?

(Defendant objects to question.)

Answer. I do not remember, is all I can answer to that.

Int. 24. Did you ever have any conversation with Henry S. Durand, the general adjuster of the Home, as to this letter of Oct. 25, 1872; if so, when and where?

Answer. I had a conversation with Mr. Durand at my office. I do not recollect exactly the time, some time during this last summer. I told him all the particulars of this matter in suit, and nothing more

was of the letter spoken of than what I have said here, as near as I can remember.

Int. 25. Was there any theory, at that conversation suggested, that this letter of Oct. 25th might be made to apply to the Hartford application instead of the Home; and, if so, by whom was such theory suggested?

98 *Int.* 26. I do not remember that any such theory was suggested. Mr. Durand's business was in the interest of the Home company.

Int. 27. Did you have said letter, or copy of said letter, at that interview before you?

Answer. I did not. Mr. Eames had come to me and asked for his letters some time before.

Cross-examination resumed by Mr. Paddock:

Int. 1. Was this former policy, issued in 1870, issued under the authority of such a ticket as you have annexed to your deposition?

Answer. It was.

Int. 2. With whom did you do the negotiating on that occasion?

Answer. Mr. Cooley.

Int. 3. This policy was issued and delivered at your office, was it not?

Answer. It was.

Direct examination resumed:

Int. 1. Was the premium on the policy last above mentioned paid previous to the delivery of the policy?

99 Answer. Yes; the first year I got the money on delivery of the policy. The second year Mr. Cooley gave his note to the bank for the amount of the premium, which note the bank discounted and furnished the money to pay for the policy. It was equivalent to cash for the policy.

Int. 2. What relation did you sustain to the bank at that time?

Answer. I was cashier.

J. A. BEACH.

Subscribed and sworn to before me this 30th day of December, A. D. 1873.

[L. S.] ROBERT McWILLIAMS,
U. S. Comr. for Southern Dist., State of Ill.

100 *Deposition of James B. Eames.*

The said JAMES B. EAMES, being first duly sworn by me as a witness in said cause, previous to the commencement of this examination, to truly testify in relation to the matters in controversy, so far as he should be interrogated, testified, and deposed, as follows:

Int. 1. What is your name, age, residence, and occupation?

Answer. James B. Eames; twenty-eight; Carlyle, Clinton County, Illinois; and occupation clerk in a flouring-mill.

Int. 2. Do you know the parties to this suit?

Answer. I do. I am one of the complainants; and I know the defendants, through their agents.

Int. 3. October 12th, 1872, who was then the owners of the Staunton flouring-mill?

(Question objected to.)

Eames & Cooley, complainants.

(Answer also objected to.)

Int. 4. What was your title, and how evidenced?

Our title was a verbal contract, as near as I can get at it.

Int. 5. I will ask you what was this contract? Was it a purchase? If so, of whom did you make purchase? How much, if any, did
101 you pay on said purchase? Did you enter into possession, or hold possession? What amount of improvements had you made on the premises, if any?

(Defendants object to the form of the question.)

Answer. We bought the mill for twelve thousand dollars of Wesley Best. We paid on said purchase six thousand dollars; we entered into possession. We had put about thirty-five hundred dollars of improvements upon it.

Int. 6. Did you make, with defendants' agents, any agreement for policy of insurance on said mill? And, if so, state such agreement, with time, place, and amount of insurance asked, and in what companies asked.

Answer. I applied for policy of insurance in October, 1872, at Bunker Hill, Illinois, of nine thousand dollars. Mr. Beach, defendants' agent, placed four thousand dollars in the Home, of New York, and five thousand in the Phœnix, of Hartford.

Int. 7. Were applications made out in these sums for insurance
102 in said companies, and, if so, what was the result of applications? State the rate per cent. of applications.

Answer. The applications were made out and forwarded to the general agencies to ascertain the rate per cent. they would charge. The application in the Phœnix was returned unaccepted, for the reason that the company did not want to carry five thousand dollars, but would carry three thousand, as follows: Fifteen hundred on building and mill machinery, and fifteen hundred on boiler and engine. The rate per cent. I do not recollect. The Home, of New York, agreed to take the four thousand at six and a half per cent. I now recollect that the rate per cent. in the Phœnix was six per cent.

Int. 8. What further negotiations did you have, if any, in reference to accepting or refusing these propositions from the Home and Phœnix, with time and place of negotiations?

Answer. As to the date I do not recollect. On or about the
103 day that Mr. Beach, defendants' agent, received an answer from the applications, I called on him at his office. He told me what the companies had written him, and he also said that the Home company ought to take the risk at the same rate per cent. that the Phœnix would, and that, if I wished, he would write to the Home company and see if he could get them to take it at six per cent., and I requested him to do so. I also asked him to write to the Phœnix and see if they would not take three thousand dollars on mill building and mill machinery, as I did not care to have any insurance on boiler and engine.

Int. 9. Did you afterwards learn the result of Beach's letter to the Home requesting them to take your risk at 6 per cent.; and, if so, in what manner, with time and place?

Answer. Yes, sir; I learned the result. Mr. Beach wrote me a letter, stating that he had received an answer from the Home company, and
104 that they would not take the risk for less than six and a half per cent. It was on or about the 22d of October, 1872, I received the letter. I received it by mail at Staunton, Macoupin County, Illinois.

Int. What has become of said letter?

Answer. The letter was burned in the mill.

Int. 11. From the time of your interview with Beach when he agreed

to write to the Home for less rates, up to the time of the reception of the letter last above mentioned, had you seen Mr. Beach, or been at Bunker Hill?

Answer. No, sir; I had neither seen him nor been at Bunker Hill.

Int. 12. What, if anything, did the letter from Beach to you, mentioned in your answer to 9th interrogatory, contain enclosed?

Answer. It contained an application to the Hartford Insurance Company, of Hartford. Said application was partly filled up by Mr. Beach and sent to me to answer questions, which he did not know concerning the mill, and for me to sign. Said application was for two thousand dollars, and the rate fixed by Mr. Beach was six per cent.

105 Int. 13. Did you fill up said application; and what, if so, did you then do with it?

Answer. I filled it up and signed it, and mailed it to Mr. Beach at Bunker Hill, Friday, October 25th, 1872.

(Witness was here shown letter marked "Exhibit A, No. 6.")

Int. 14. Is that the letter in which you enclosed said application?

Answer. It is.

Int. 15. In answer to what was this letter written?

Answer. It was an answer to Mr. Beach's letter which I had received that day in regard to the Hartford application, and as to what the Home Insurance Company had written him, that they would not take the risk for less than six and a half per cent. It was also, and more especially, an acceptance of the Home's proposition.

Int. 16. To what does the six and a half per cent. in said letter allude?

(Defendants object to question.)

Answer. It alludes entirely to the Home Insurance Company.

106 Int. 17. What knowledge have you, if any, that said Agent Beach so understood this expression of six and a half per cent., in said letter?

Answer. He told me that he had received my letter of acceptance and had forwarded it to the general office at Chicago, and had told them to send him ticket.

(Answer objected to.)

Int. 18. Up to the date of your letter of Oct. 25th, in any of your conversations with Agent Beach in reference to the companies that he represented, was there any mention of any rate per cent. at six and a half except by the Home?

Answer. There was not.

Int. 19. Was the reception of the application in the Hartford, as mentioned in your answer to interrogatory 12th, the first and only knowledge you had of said application?

Answer. No, sir; it was not.

Int. 20. State when you first obtained knowledge said application, Hartford.

Answer. The date I do not recollect. I was at Mr. Beach's office, and we were talking over the matter of insurance, and I said to him

107 that the Home would take four thousand and the Phœnix would take three thousand, which would make a total of only seven thousand; and that I had applied for nine thousand and wanted that amount. I then asked him if he represented any other good company in which he could place the other two thousand. Mr. Beach said to me that he was agent for the Hartford, but did not know whether they would take any risk, but that he would write them, and, if they would take it, he would send me application to fill out. In a day or two after-

wards he sent me by mail an application in the Hartford, with the questions partly answered by himself. There was also a letter inclosed, stating that he had not heard from the Hartford Company, but as he was going to write to me in regard to the Home proposition, he inclosed the Hartford application, partly filled up, for me to finish filling up, and return it to him, so if the Hartford Company would take the risk, he would have the application ready to send right on.

Int. 21. What did you do with said Hartford application?

108 Answer. I finished filling it up and returned it to Mr. Beach, inclosed in the letter of Oct. 25th, 1872.

Int. 22. What portions of said letter referred to the Hartford application, if any, and what portions referred to the Home's proposition at six and a half, as mentioned in the letter of Beach?

(Defendant objects to question.)

The first part of the letter referred to the Hartford application, viz: "I believe I have answered all the questions necessary to the best of my knowledge." The remainder of the letter referred to the Home Insurance Company.

(Answer also objected to.)

Int. 23. I will ask you what was that portion of said letter referring to the Home considered by you to be?

(Question objected to.)

Answer. It was considered an acceptance of their terms of six and a half per cent.

(Answer also objected to.)

Int. 24. Was any portion of the Hartford application filled out in your presence in the office of Agent Beach, at Bunker Hill?

Answer. No, sir; I never saw until I received it at Staunton.

109 Int. 25. Did you have any conversation with said Beach at his office at Bunker Hill, or anywhere else, in which he stated to you that the Hartford Company would ask six and a half per cent.?

(Question objected to.)

Answer. I do not recollect that I ever did.

Int. 26. Did you have any conversation with him at all, after the time when he agreed to write to the Home to get less rates than six and a half on your application then filed in the Home?

Answer. I had not, until after the burning of the mill.

Int. 27. After information conveyed to you of the general agent's letter of October 18th, stating that the Home could not go under six and a half, did you have any personal interview with Mr. Beach in which you declined their rate of six and a half per cent.?

Answer. I did not see Mr. Beach any more after that time until after the mill burned.

Int. 28. I will ask you if you ever accepted the offer of the Home of six and a half per cent. on your application of four thousand, of

110 date Oct. 12th, 1872? If so, how and in what matter did you make such acceptance; if by letter, of what date, to whom, and when mailed?

Answer. I did. I accepted it by letter of date Oct. 25th, 1872, to James A. Beach. I mailed this letter the day of its date.

Int. 29. What was complainant's by the burning of the mill in controversy?

Answer. About fifteen thousand dollars.

Int. 30. Did you give defendants any notice of loss and make any tender of premium? If so, state all the particulars of such notice and tender.

Answer. I gave defendants' agent, Mr. Beach, a sworn statement or proof of loss, and at the same time tendered him the amount of premium on four thousand dollars, at the rate of six and a half per cent.

Int. 31. When and at what place was such tender and proof made?

Answer. I do not recollect the date, but it was some time in the month of November, 1872. The tender and proof was made at the office of Mr. Beach, defendants' agent, at Bunker Hill, Illinois.

Cross-examination, Geo. L. Paddock, esq.:

111 Int. 1. What day in October did this mill burn?

Answer. The mill burned down on the morning of the 29th of October. To get at a little more definitely, we will say between the hours of 12 p. m. and 2 a. m.

Int. 2. When did you make this purchase of which you speak?

Answer. The mill was bought by E. A. Cooley some time in the year 1868. I bought one-half interest in the mill December 1st, 1870.

Int. 3. You bough' a half interest of whom?

Answer. E. A. Cooley.

Int. 4. Where is the contract between yourself and Cooley?

Answer. There was no contract, except a verbal one.

Int. 5. Where is Cooley's contract under which he purchased, as you say?

Answer. I do not know where it is.

Int. 6. When did you and he go into partnership?

Answer. Dec. 1, 1870.

Int. 7. Did you have any partnership contract in writing?

Answer. No, sir.

Int. 8. Did you have a verbal understanding as to your partnership?

112 Answer. We did.

Int. 9. Did that embrace the mill property?

Answer. It did.

Int. 10. Where was it made?

Answer. At Staunton.

Int. 11. In conversation between yourself and Cooley?

Answer. Yes, sir.

Int. 12. Please state the whole of that conversation, or as much of it as you can recollect.

Answer. The conversation that each of us was to be liable to share equally in the losses and gains of the mill. I was to have control of the running of the mill, and all the business of the mill.

Int. 13. Have you now stated the substance of the contract under which you became interested in the mill and mill business with Cooley?

Answer. I have, so far as that mill is concerned.

Int. 14. What is the description of the land on which that mill stood?

Answer. It was a piece of land something near square, containing two acres and a fraction of acre.

113 Int. 15. Is that all you can say to identify or describe the land?

Answer. No, sir. On about one-third of it was a pond of water, which we used in supplying our boilers to make steam.

Int. 16. When was this six thousand dollars paid Wesley Best?

Answer. I cannot tell you.

Int. 17. Did you pay any of it?

Answer. No, sir; I did not.

Int. 18. Did you ever have any dealings with Best on the subject of this mill property?

Answer. I did not.

Int. 19. Or with Best and Sparks?

Answer. I did not.

Int. 20. Did they, or either of them, once claim to own this mill propesty?

Answer. They did.

Int. 21. Do you know from whom they purchased it?

Answer. I do not.

Int. 22. Will you please to explain just exactly how you claim an ownership in this mill property?

Answer. Simply because I bought half of it.

Int. 23. What did you pay for your half of it?

Answer. I was to pay E. A. Cooley six thousand dollars.

114 Int. 24. Did you give him your notes for this amount?

Answer. I did not.

Int. 25. How were you to pay it?

Answer. Mr. Cooley and myself were partners in another mill, and it never was definitely decided how I was to pay him that amount, as in our agreement we had an understanding that in case either party became dissatisfied with the partnership, I was to take one mill and he the other, and the payment was to be decided on such dissolution of partnership. In case we did not dissolve, the company was to pay Wesley Best the balance due on said mill, and we were to settle it between ourselves.

Int. 26. Was this the understanding from the first with regard to the mill?

Answer. I think it was.

Int. 27. Then, as I understand it, you never became absolutely bound to pay the six thousand dollars to Cooley, but could have avoided doing so at any time you chose to dissolve the firm on becoming dissatisfied with the partnership? Am I correct?

115 (Question objected to.)

Answer. I don't look at it so.

Int. 28. Did your contract require you to take that mill in case of a dissolution?

Answer. It did not.

Int. 29. If you did not take that mill you would not have to pay any of the six thousand dollars by your contract, would you?

Answer. I would have had to have paid that, or assumed that amount, or a greater amount, of the indebtedness on the other mill, as our agreement would have been, in case we were dissolved—I do not know what the result would have been had we dissolved, as we were in such business as we would have to have settled up our affairs satisfactory to ourselves.

Int. 30. Have you ever paid Cooley any part of this six thousand dollars?

Answer. I assumed an amount of his private indebtedness. I also sold my interest in the other mill to him, and we have not as yet had a final settlement. Don't know whether I would owe him anything or not when we get our affairs all settled.

116 Int. 31. Have you any personal knowledge of the purchase from Wesley Best, of which you have spoken, or how much was paid on that purchase?

Answer. As I understand it, E. A. Cooley bought the mill of Best & Sparks. Some time after that Mr. Best bought the interest of Mr. Sparks, after which all moneys paid, or contracts or agreements with regard to the mill were made with Mr. Best. Mr. Sparks, I think, had

no interest whatever in the mill when I went into it. This is why I said we bought the mill of *of* Mr. Best.

Int. 32. But it is true, is it not, that you have no personal knowledge as to the terms of the purchase made by Cooley from Best & Sparks?

Answer. I did not hear any part of that contract and know nothing about it but what I have heard through others.

Int. 33. Do you know of any deed from Best & Sparks, or either of them, to Cooley & yourself, or either of you, conveying this mill property?

Answer. I do not.

Int. 34. There never was any, was there?

Answer. I cannot say.

117 Int. 35. Why can you not say?

Answer. I have two reasons for it, viz: I heard Mr. Cooley say that he had no deed. I afterwards heard him say that he was going to get a deed. I heard Mr. Best say that he would make him a deed, but whether it was done or not I do not know.

Int. 36. Was this remark of Mr. Best after you tendered the premium to Mr. Beach?

Answer. No, sir.

Int. 37. When was it?

Answer. As near as I recollect it was in November, 1870.

Int. 38. Can you speak for yourself and say whether you ever received a deed of any interest in that property?

Answer. I can speak for myself and say that I never did.

Int. 39. Was any person interested in that property on the 12th of October, 1872, as mortgagee?

Answer. Not that I know of.

Int. 40. No person held any mortgage on it that you know of?

Answer. There was no mortgage on it that I know of. If there

118 was any mortgage on it I do not know of it.

Int. 40. Are you certain that Eames & Cooley never made any mortgage on that mill property?

Answer. I am. If there ever was any made by the firm, I have no knowledge of it.

Int. 41. On the 12th of October, 1872, had Eames & Cooley any insurance in the Phœnix Insurance Company of Hartford covering that property?

Answer. No, sir.

Int. 42. In stating that Mr. Beach placed four thousand dollars in the "Home, of New York," you refer to the application already spoken of by you of 12th of October, 1872, as sent forward by him, and the correspondence connected with that application, do you not?

Answer. Yes, sir.

Int. 43. You also refer to those matters when you say that the "Home, of New York," agreed to take the four thousand dollars at six and a half per cent., do you not?

(Question objected to.)

Answer. I don't understand what you mean by "those matters."

119 Int. 44. By "those matters," I mean the same application and the correspondence which I had already alluded to, and I wish to know whether your testimony was based, in that respect, upon the papers already in the case, or upon something else?

(Question objected to.)

Answer. My testimony was not based upon this application and those papers as much as it was upon a letter written to me by Mr.

Beach, telling me that the "Home Insurance Company" would not take the risk for less than six and a half.

Int. 45. That is the same letter of which you have testified, and a part of the correspondence connected with your application, is it not?

Answer. Yes, sir.

Int. 46. Then it is true that when you talk about placing insurance in the "Home," and about the "Home" agreeing to take four thousand dollars, you base your statement on your view of the writings you have mentioned, is it not.

120 (Question objected to.)

Answer. I don't understand the question.

Int. 47. I will try to explain my meaning. Have you any agreement with the "Home Insurance Company" outside of the writings of which you have testified in this case?

(Objected to.)

Answer. I never had any agreement with the "Home Insurance Company" except through their agent, Mr. Beach, which agreement I have already testified to.

Int. 48. You have testified that you regarded your letter of October 25, 1872, as the acceptance of a proposal by the Home Insurance Company; was that the agreement to which you refer?

Answer. I don't understand the latter part of the question.

Int. 49. Had you any dealings with the "Home Insurance Company" outside of the application and letters, including the one burned up, of which you have testified?

Answer. I had what I termed dealings with the Home Insurance Company through their agent, Mr. Beach; that is, Mr. Beach
121 and myself had a personal conversation in regard to the insurance business in the "Home Insurance Company" one or more times before I accepted their proposition by my letter of Oct. 25th, 1872.

Int. 50. In these conversations no contracts were made, were there?

(Question objected to.)

Answer. There was no definite contract made during these conversations, for the reason that Mr. Beach rather insisted upon me waiting until he wrote to the Home office to see if he could not get the company to take the risk for six per cent. Had he not proposed writing to the company to see if he could get them down to six per cent. I would have closed the contract by accepting their terms at six and a half verbally.

Int. 51. Had you not been informed about the 14th or 15th of October that the rate of the "Home" would be six and a half; and, if so, where did you get that information?

Answer. I was informed, on or about the 14th or 15th of October,
122 that the rate the Home Insurance Company asked was six and a half. I was informed by Mr. Beach, their agent, at Bunker Hill, Illinois.

Int. 52. Didn't you decline to pay this rate and direct Mr. Beach to use his efforts to get it reduced?

Answer. I did not decline it, and would have accepted it had not Mr. Beach proposed me waiting until he could write to the company and see if they would not take it for six, as the Phœnix Insurance Company had written him that they would insure for six, so I did not decline nor accept it, but simply left it open until Mr. Beach could hear from them again.

Int. 53. Did you tell Mr. Beach that six and a half was too high?

Answer. I said to Mr. Beach that six and a half was too high and that six was too high, for I could get insurance in St. Louis for five and

a half, but if I could get his companies to take it for six, and he would throw off half of his commission, as he had formerly done, that it
123 leave the premium about equal to five and a half, and that I would like to give him the business.

Int. 54. Did you demand a policy of insurance when you tendered the premium to Beach as stated by you?

Answer. I did.

Int. 55. What kind of policy did you demand?

Answer. I demanded that kind of a policy which should have been issued on the application to the "Home Insurance Company."

Int. 56. One of their ordinary policies on such risks, such as had been issued to Cooley?

Answer. Having never seen one of their policies, I could not say whether it was an "ordinary policy" or not.

Int. 57. What did you say to Beach as to the kind of policy you wanted?

Answer. I do not recollect just what I said. I had a proof of loss, with a notary's seal upon it, which I gave to Mr. Beach, and told him there was the proof of my loss, and told him I had the money, which I showed him, to pay my premium on the policy of four thousand dollars
124 which I claimed should be issued to us. I did not give him a description of what kind of a policy I wanted, except a policy of fire-insurance.

Int. 58. You claimed that a policy should be issued to your firm on the application filed as if the same had been accepted by the company, did you not?

Answer. The same had been accepted by the company, as I understood it.

Int. 59. Then you claimed that the company should issue your firm a policy in accordance with said application, did you not?

Answer. I don't understand the question.

Int. 60. You claimed that Mr. Beach should deliver you a policy in pursuance of your application No. 105, which you claimed had been accepted; is that true, and can you understand that question?

(Question objected to.)

Answer. I don't really know that the application has anything to do with the policy more than to give a description of the property to
125 be insured. I claimed that I was entitled to a policy upon a letter from the "Home" to Mr. Beach, their agent, saying they would take a risk of three thousand dollars—four thousand dollars, I mean—at six and a half per cent. I do not know what the date of their letter to Mr. Beach was. I acted and closed the contract upon Mr. Beach's letter to me saying that he had heard from the Home Insurance Company a second time, and that they would not take the risk for less than six and a half per cent.

Direct examination resumed by Mr. Burnett.

Int. 1. To what extent did Mr. Beach know of your interest, claim, or title to the mill in question?

Answer. I do not know.

J. B. EAMES.

Subscribed and sworn to before me this 31st day of December, A. D. 1873.

[L. S.] ROBERT McWILLIAMS,
U. S. Comr. South. Dist., State of Ills.

126 *Deposition of John H. Bird.*

The said JOHN H. BIRD, being first duly sworn by me as a witness in said cause, previous to the commencement of this examination, to truly testify in relation to the matters in controversy, so far as he should be interrogated, testified and deposed as follows:

Int. 1. What is your name, age, residence, and occupation?

Answer. My name is John H. Bird. I am thirty-seven. I live at Staunton, Macoupin County, Illinois, and I am a stock-dealer and farmer.

Int. 2. Do you know the parties to this suit?

Answer. I know Mr. Eames and Mr. Cooley, and I am acquainted with Mr. Beach, defendant's agent.

Int. 3. How long have you known Messrs. Eames & Cooley?

Answer. I have known Mr. Cooley about six years, and Mr. Eames about three.

Int. 4. Do you know the mill in question, and who was in the occupancy thereof at the time of the burning, and for how long previous?

Answer. Yes, sir; I know the mill in question, and I know that
127 Messrs. Eames & Cooley were the occupants of the mill at the time of the burning, and had been for about a year and six months, if I recollect right.

Int. 5. What amount of loss by burning?

Answer. Well, I would consider it a total loss, with the exception of the old iron.

Int. 6. Have you heard any conversation between complainants, or either of them, and James A. Beach, of Bunker Hill, concerning insurance on said mill? and, if so, state particularly such conversation, with time and place.

(Question objected to by defendant.)

Answer. Well, I went over the morning after the fire with Mr. Eames to Bunker Hill; we went into the office of Mr. Beach. Mr. Beach said, "You have had bad luck, Mr. Eames," if recollect right. I think Mr. Eames asked Mr. Beach about his insurance; Mr. Beach said that he sent his application to the "Home," and had also notified them of the fire afterwards. He did not know whether they would send a
128 ticket or not. I don't recollect all that passed. Mr. Beach said he would do what he could for him towards getting it. Me and Mr. Eames went over some time afterwards, probably a week. They talked the thing over again. I don't just recollect how the conversation come, but, if I recollect right, Mr. Beach showed a letter that he got from the "Home," saying that "We had like to have been caught;" or something to that amount; saying he got the notice of the fire just after getting Mr. Eames's acceptance of the insurance, if I recollect right. Mr. Eames says, "I think they are caught," or something to that amount. Mr. Beach had some insurance books, I think, and read over to see if he could'nt—I don't know just exactly how that came in—to see if he couldn't get some information whether the company was liable or not. Mr. Beach rather encouraged him that they were, is the way I understood it. Me and Mr. Eames come home to Staunton. He seemed to be in pretty spirits, and thought he would get four thou-
129 sand dollars in the "Home;" that is all I remember about it. I think it was the first morning after the fire Mr. Eames said to Mr. Beach, "I suppose you wouldn't take the premium this morning?" and Mr. Beach says, "I could not, under the circumstances.

(Answer objected to by defendant's counsel, Mr. Paddock.)

JOHN H. BIRD.

Subscribed and sworn to before me this 30th day of December, A. D. 1873.

[L. S.] ROBERT McWILLIAMS,
U. S. Comr. Southern Dist., State of Ills.

Deposition of Wesley Best.

The said WESLEY BEST, being first duly sworn, on oath deposes and says as follows, to wit:

Int. 1. What is your name, age, residence, and occupation?

Answer. My name is Wesley Best. My age forty-seven. My residence Litchfield, Illinois; and my occupation mill-owner. I am not exactly a miller, but I can run a mill.

130 Int. 2. Do you know complainants, or either of them, and how long have you known them?

Answer. I know both of them, and have known them—well, I have known them for ten or fifteen years.

Int. 3. Do you know the mill in question, and how long have you known it? Who were the owners at the time of the burning, and for how long had they owned it before it was burned, and what particular interest or ownership had they at that time?

Answer. Well, I do know the mill in question; I have known it for eighteen years—it will be nineteen next spring. Myself and Mr. Sparks had it built. At the time of the fire Mr. Cooley and Eames were the owners of the mill. I will see. If I was down to my books I could tell you exactly. It is either four or five years since Mr. Cooley bought the mill of Best & Sparks for twelve thousand dollars. He paid four thousand down, balance to be paid in one, two, and three years, at ten per cent. He afterwards paid us either two thousand or twenty-

131 two hundred dollars—about a year afterwards. To the best of my recollection it was twenty-two hundred dollars. Mr. Cooley went into possesson as soon as bought it, and was in possession up to the burning of the mill.

Int. 4. At the time of the sale of said mill by Best & Sparks, what title of ownership was in Best & Sparks?

(Question objected to.)

Answer. Well, we had a clear title to the mill, and did not owe anything on it. We took a warranty-deed for the land from William B. Little that the mill did stand on before it was burned.

Int. 5. What was the value of said mill when burned?

Answer. Well, we sold it for twelve thousand dollars to Cooley, and they put in some three or four thousand dollars' worth of machinery. I would think the mill to be worth, when burned, about fifteen thousand dollars.

Cross-examination by Geo. L. Paddock, esq., counsel for defendants:

132 Int. 1. Cooley was to pay ten per cent. interest on the deferred payments?

Answer. Yes, sir.

Int. 2. You have received twenty-two hundred dollars in addition to the four thousand?

Answer. We received of Mr. Cooley, I think, twenty-two hundred dollars about one year after we sold the mill to him, which was to go on the mill.

Int. 3. Is the remainder of the purchase-money unpaid?

Answer. It is unpaid.

Int. 4. What did it amount to Oct. 12th, 1872?

Answer. Well, it would be six thousand dollars and the interest. I say it would be about six thousand dollars and the interest.

Int. 5. Where is the contract between yourselves and Cooley?

Answer. We never made no writing; it was a parol contract.

Int. 6. Please state what passed orally on the subject on the purchase.

Answer. I have stated that, Mr. Paddock. We sold him the mill for twelve thousand dollars. He paid us four thousand dollars down, balance to be paid in one, two, and three years, with ten per cent.
133 interest. We were to make a deed whenever he called for it, and have always been ready to make the deed to him ever since the sale.

Int. 7. How long prior to the time Eames came into the concern was this sale to Cooley?

Answer. Well, I can't tell exactly—about two years before. I don't want to be positive. I could tell exactly if I had my books.

Int. 8. You have testified that Eames & Cooley were the owners of the mill when it burned. What personal knowledge have you as to the interest of Eames?

Answer. Mr. Cooley & Eames both in person have told me that Cooley sold Mr. Eames one-half of the mill; and I know they run it in their names and done business as a firm of Eames & Cooley.

Int. 9. Is it not true that, so far as you know, there have never been any writings concerning the purchase of this mill by Cooley or concerning Eames's interest in the mill?

Answer. There hasn't been no writings from Best & Sparks to Cooley; and, in regard to Cooley & Eames, I don't know anything about it; that is, in regard to the writings.

134 Int. 10. Did Best & Sparks, or either of them, ever take any mortgages for this unpaid purchase-money?

Answer. No, sir.

Int. 11. Have you any interest in the prosecution of this suit, and have you furnished or agreed to furnish any portion of the expenses of this litigation?

Int. 12. These other policies were taken out for the benefit of Best & Sparks, and it was agreed that they should keep the mill insured for our benefit; but I have not furnished any of the money to prosecute this suit, nor wasn't to. There was no such agreement.

Int. 13. Where is Cooley now?

Answer. I do not know.

Int. 14. When was he last in these parts?

Answer. Some four or five weeks ago I got a letter from him from Nokomis.

Int. 15. Did you or Sparks have anything to do with the procurement, at Mr. Beach's office, of this former insurance of which you speak?

Answer. We did not. Mr. Cooley got it and assigned it over to us.

Int. 16. Did you ever give a lease to Cooley or Cooley & Eames of this property?

135 Answer. We did not. It was sold to Mr. Cooley as I have stated.

Int. 17. Who paid the taxes on the property?

Answer. Mr. Cooley, and Mr. Eames & Cooley.

Int. 18. I cannot tell with an examination of the deed, as to the description.

WESLEY BEST.

Subscribed and sworn to before me this 30th day of December, A. D. 1873.

[L. S.]

ROBERT McWILLIAMS,
U. S. Comr. Southern Dist., State of Ills.

Deposition of Wesley Best.

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[L. S.] R. McWILLIAMS,
U. S. Comr. for South'n Dist., State of Ill.

UNITED STATES OF AMERICA,
Southern district of Illinois, ss :

I, Robert McWilliams, of the county of Montgomery, and State of Illinois, a commissioner, duly appointed to take the depositions of James A. Beach, of Bunker Hill, Macoupin County, Illinois; James B. Eames, of Carlyle, Clinton County, Illinois; John H. Bird, of Staunton, Macoupin County, Illinois; and Wesley Best, of Litchfield, Montgomery County, Illinois, whose names are duly subscribed to the foregoing
136 depositions, do hereby certify that, previous to the com' of the examination of the said James A. Beach, James B. Eames, John H. Bird, and Wesley Best, as witnesses in the said suit between the said Jas. B. Eames et als., plaintiff, and the said Home Insurance Company of New York, said witnesses were duly sworn by me to testify the truth in relation to the matters in controversy between the said Jas. B. Eames et al., plaintiff, and the said Home Insurance Company of New York, defendant, so far as they should be interrogated concerning the same; that the said deposition was taken *was taken* at my office, in the city of Litchfield, in the county of Montgomery, and State of Illinois, on the 29th day of December, A. D. 1873, and that said examination of witnesses by interrogatories and answers was adjourned from day to day until ten o'clock of this 31st day of December, A. D. 1873, at which time the examination closed; and the interrogatories and answers taken as aforesaid and written down as answered, the reading of the same to witnesses having been waived by consent of B. F. Burnett, counsel for plaintiffs, and by Geo. L. Paddock, counsel for defendants, the same were
137 thereupon signed and sworn to by deponents at the place and day and year last aforesaid.

[L. S.] ROBERT McWILLIAMS,
U. S. Comr. for Southern Dist., State of Illinois.

In the circuit court. In chancery.

138 UNITED STATES OF AMERICA,
Southern District of Illinois:

JAMES B. EAMES ET AL.
vs.
HOME INSURANCE COMPANY OF NEW YORK.

FACTS ADMITTED.

In this case it is agreed that, on or about October 12, 1872, said complainants left with James A. Beach, local agent of defendant, at Bunker Hill, to be transmitted to Arthur E. Ducat, general agent, at Chicago, of said defendant, an application for insurance on a flouring-mill, numbered 105, and marked "Exhibit No. 1," to be exhibited herewith, and read as evidence on the trial in said cause; that said Beach forwarded said application by mail to Arthur C. Ducat in a letter, of which the following is a copy:

[Office of James A. Beach, notary public and insurance agent. Represents Home Insurance Co. of N. Y., Hartford of Hartford, Phœnix of Hartford, Andes of Cincinnati.]

1. "BUNKER HILL, ILL., *Oct.* 12, 1872.

"A. C. DUCAT, ESQ., *Genl. Agt.:*

"DEAR SIR: I enclose app. for ins. which you have carried for two

years, and was not renewed in Feb'y, because I asked 5½, (you were carrying it at 5%). They now want to insure again. The other large mill in Staunton has lately burned, which is, I suppose, the reason. I have not learned the particulars, but some think the owners burned it.

"Yours, truly,
(Signed) "JAS. A. BEACH."

139 That, on the 14th Octo., 1874, said Ducat received said letter of Beach and its enclosure, and wrote to said Beach in respect thereto a letter, whereof the following is a copy:

[Home Insurance Company of New York, General agency for State of Illinois, Indiana, Wisconsin, and Minnesota. Arthur C. Ducat, general agent.]

No. 2. "CHICAGO, *Oct.* 14, 1872.

"JAS. A. BEACH, Agt.,
"*Bunker Hill, Ill.:*

"DR. SIR: We have yours of the 12th, and application of Eames & Cooley on flour-mill at Staunton. Our present rate on this risk will not be less than 6½ %, which is probably more than they will pay. If they wish a Home policy at that rate let us know, and we will send you ticket.

"Truly, yours,
(Signed) "ARTHUR C. DUCAT,
"*Genl. Agent.*"

Which letter was returned to said Ducat by mail by said Beach, October 18, 1872, with the endorsement in the handwriting of said Beach:

3.—"The Phœnix will carry $3,000 at 6 %; will you not do the same?
"Yours truly,
"JAMES A. BEACH."

Across which is endorsed in pencil, Oct. 18, 1872, in the handwriting of said A. C. Ducat:

140 4.—"No; 6½ % is our rate."

On Oct. 18, 1872, said Ducat mailed to said Beach a letter, of which the following is a copy:

[Letter head of Chicago genl. agency.]

5. "CHICAGO, ILLS., *Oct.* 18, 1872.

"JAMES A. BEACH, Agt.,
"*Bunker Hill, Ill.:*

"DR. SIR: Yours received. We cannot go under 6½ % on Eames & Cooley flour-mill.

"Truly, yours,
(Signed) "ARTHUR C. DUCAT,
"*Genl. Agent.*"

6. On or about Oct. 25, 1872, said Eames & Cooley mailed at Staunton a letter to said Beach, of which the following is a true copy:

"STAUNTON, ILL., *Oct.* 25, 1872.

"MR. JAMES A. BEACH,
Bunker Hill, Ill.:

"D'R SIR: I believe I have answered all the questions necessary, and

to the best of my knowledge. 6½ % is pretty heavy, but I guess we will have to stand it, as I do not know where we can do any better at present.

"Yours, &c.,
(Signed) "EAMES & COOLEY."

141 Inclosed in which letter of said Eames & Cooley, of Oct. 25, 1872, was an application to the Hartford Fire-Insurance Company, bearing date Oct. 25, 1872, marked "Exhibit No. 2," to be exhibited herewith, and read as evidence on the trial in said cause.

On October 26th, 1872, said Beach mailed to the general western agent of the Hartford Fire-Insurance Company, at Chicago, a letter enclosing said last-named application, and bearing date on said Oct. 26, a copy of which is as follows:

[Office of James A. Beach, notary public and insurance agent. Represents Home Ins. Co. of N. Y., Hartford of Hartford, Phœnix of Hartford.]

7 "BUNKER HILL, *Oct.* 26, 1872.

"GEO. T. BISSELL, Esq.:

"D'R SIR: I enclose appl. for ins. I did not make a personal survey. I have been carrying the risk in the Home and Phœnix two years, and they want this additional rate 6½. I did carry it before Chicago fire at 5½.

"Yours, truly,
(Signed) "JAMES A. BEACH."

On October 28, 1872, said Beach mailed to said Ducat a letter, of which the following is a true copy:

[Beach's letter-head.]

8. "BUNKER HILL, *Oct.* 28, 1872.

142 "Hon. A. C. DUCAT:

D'R SIR: Please send me a ticket for $4,000. Ins. on appl'n No. 105, Staunton mill, @ 6½.

"Yours, truly,
(Signed) "JAS. A. BEACH."

9. October 29, 1872, said Beach sent telegraphic message to said Ducat, of which the following is a copy:

[Dated Bunker Hill, Ill., 29, 1872; received at Chicago, Oct. 29, 11.20 a. m.]

"To. A. C. DUCAT,
"*Home Ins. Co:*
"Do not return ticket for mill-insurance; it is burned.
"JAS. A. BEACH."

Oct. 29, 1872, said Ducat mailed to said Beach a letter, of which the following is a copy:

[Home Insurance Company of New York, general agency for States of Illinois, Indiana, Wisconsin, & Minnesota. Arthur C. Ducat, general agent.]

10. "CHICAGO, ILL., *Oct.* 29, 1872.

"JAS. A. BEACH,

"*Agt. Bunker Hill, Ill.:*

"D'R SIR: Yours of the 28th, requesting ticket on the Staunton mill, came duly this morning, and in a few minutes your telegram ar-
143 rived announcing the burning of the mill. We came very near being caught, but are glad it is no worse. If we had not demanded the additional ½ % we should have had $4,000.00 to pay.

"Yours, truly,

(Signed) "ARTHUR C. DUCAT."

It is also agreed that on the 28th day of February, 1870, on application No. 71, said Home Insurance Company issued to E. A. Cooley a policy of insurance marked "Exhibit No. 3," to be read in evidence in this cause, the written part whereof is as follows:

* * * * "In consideration of one hundred and seventy-five dollars to them paid by the insured hereinafter named, the receipt whereof is hereby acknowledged, do insure Mr. E. A. Cooley against loss or damage by fire to the amount of thirty-five hundred dollars, as follows: $1,000.00 on his frame steam flouring-mill, situated in the town of Staunton, Macoupin County, Illinois, on the southeast qr. of the northeast qr. of the northeast qr. of section No. 31, township 7, range 6, and known as the Staunton mills; $1,500.00 on machinery contained in the same, $1,000.00 on boiler and engine contained in the same. Entirely detached.
144 Reference had to application No. 71, which is hereby made a part of this policy. $3,000.00 insurance in the Phœnix of Hartford. In case of loss under this policy, $3,500.00 to be paid to Sparks & Best, mortgagee's, as their interest may appear."

Which policy ran to Feb'y 14, 1871, at noon, and was continued in force by renewal certificate to the 14 Feb'y, 1872, at noon, when it expired.

And it is also agreed that on the 28th Feb'y, 1870, the Phœnix Insurance Company of Hartford issued to said E. A. Cooley a policy of insurance, the written portion of which is as follows:

"The Phœnix Insurance Company, in consideration of one hundred and fifty dollars to them in hand paid by the insured hereinafter named, the receipt whereof is hereby acknowledged, do insure Mr. E. A. Cooley against loss or damage by fire to the amount of three thousand dollars, as follows: $500.00 on his frame steam flouring-mill, situated in the town of Staunton, Macoupin Co., Illinois, on the southeast qr. of the northeast qr. of the northeast qr. of section 31, town. 7, range 6, and known as the Staunton mills; $1,500 on machinery contained in same, $1,000.00 on engine and boiler contained in same. Entirely de-
145 tached. Reference had to application No. 2249, hereby made a part of this policy. Other insurance $3,500 in Home, New York. In case of loss under this policy $3,000 to be paid to Mess. Sparks & Best, mortgagees, as their interest may appear;" which last-named policy was for one year from said Feb'y 14, 1870, and was continued in force by renewal to Feb'y 14, 1872, at noon, when it expired.

It is agreed that the originals of the above shall be produced on the

trial herein as exhibits (whether named as exhibits or not) by the respective holders.

B. F. BURNETT,
Solr. for Complts.
PADDOCK & IDE,
Sols. for Defts.

146 No. 6.] EXHIBIT A.—R. McW.

[Eames & Cooley, proprietors Harvest Home Mills. Proprietors Nokomis City Mills, Nokomis, Illinois. Monitor print.]

No. 6.] STAUNTON, ILLINOIS, *Oct.* 25, 1872.

Mr. JAMES A. BEACH,
Bunker Hill, Ills.:

DEAR SIR: I believe I have answered all the questions necessary, and to the best of my knowledge. 6½ % is pretty heavy, but I guess we will have to stand it, as I do not know where we can do any better at present.

Yours, &c.,

EAMES & COOLEY.

No. 2.]

147 No. 7] EXHIBIT D.—R. McW.

[Home-Insurance Company of New York, general agency for States of Illinois, Indiana, Wisconsin, and Minnesota. Arthur C. Ducat, general agent.]

CHICAGO, ILL., *Nov.* 16, 1872.

JAMES A. BEACH, Agt.,
Bunker Hill, Ills.:

DEAR SIR: We have your favor of the 13th, with letter of Mr. Burnett, attorney for Messrs. Eames & Cooley, and copy of your reply.

All we have to say is that if Messrs. E. & C. had a valid claim against the Home, we should pay without grumbling, but we would rather contest this case to the last courts than admit such a precedent. We had never accepted the risk. We wrote you Oct. 14th, as follows: "If they wish a Home policy at that rate (6½,) let us know and we will send you ticket." This letter you must either have shown to them or communicated its contents, so that they must have known that you had no authority to accept the risk or bind the company without referring to us and obtaining our sanction. We did not know that they would accept our rate until after the mill was burned, and consequently could not have completed any contract.

ARTHUR C. DUCAT,
Gen'l Agt.

148 EXHIBIT E.—R. McW.

GENERAL AGENCY STATE OF

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Risk is this day authorized in the Home Ins. Co. of N. Y. as follows, viz:

on property of , building occupied as and located at , $ on building, $ on machinery, $ on stock.

The written portions of policies on risk to be all worded alike, and written pro-rata with this on each subject, all of which has been explained to the agent.

Survey and application to be signed by the applicant before policy is written and forwarded to company with report of risk.

The risk is not binding on the company until the issue and delivery of policy by regularly appointed agents at this agency.

The agent will forward this certificate of authority attached to the signed application and survey, with his report of risk to the company.

In case policy is not written on this certificate within days from date, the agent will return it to the undersigned.

Rate: Bld'g, ; stock, ; agent Home Ins. Co. of N. Y.

(Indorsed:) February 10, 1874. J. A. Jones, clerk.

149 *Deposition of E. A. Cooley.*

In circuit court in chancery.

UNITED STATES OF AMERICA,
Southern District of Illinois:

Deposition of E. Cooley, a witness in the case before R. W. McWilliams, commissioner, at his office, at Litchfield, Illinois. Sworn and examined, (in pursuance of an agreement,) at Rossville, in the county of Allamakee, and State of Iowa, before I. B. B. Baker, a notary public, in a certain action now pending, wherein James B. Eames, et , is plaintiff and Home Insurance Company of New York is defendant.

Interrogatory 1st. Your name, age, occupation, and residence?

Answer. E. A. Cooley is my name. My age is 46 years; occupation, minister of the Gospel, and my residence Nokomis, Illinois.

Interrogatory 2d. Are you acquainted with the parties to this suit?

Ans. I am.

Interrogatory 3d. Are you acquainted with James A. Beach, of Bunker Hill, Illinois; and, if so, do you know what relation he sustains, if any, to defendant?

150 Answer. Am acquainted with James A. Beach, of Bunker Hill, Illinois, and know the relation he sustains to defendant,

Interrogatory 4th. What knowledge, if any, did said Beach have, Oct. 12th, 1872, of the title of their flouring mill at Staunton—the mill in question?

Answer. I told Mr. Beach I had paid six thousand dollars on the mill; had no deed, but could get one (deed) at any time. Mr. Best had offered me a deed prior to October the 12th, 1872, but I would not take it. This he also told Mr. Beach.

Interrogatory 5th. Do you know of defendant carrying any risk as insurance on said flouring-mill prior to Oct. 12th, 1872, for complainants or either of them; and, if so, state if you know by whom and to whom the premiums was paid, and at what time in reference to issuing and delivering the policy to complainants or either of them?

Answer. I do know of defendant carrying risk as insurance on said flouring mill prior to October 12th, 1872, for one of complainants (viz, E. A. Cooley.) The premiums were paid by myself (E. A.

151 Cooley) to James A. Beach. Application made, policy issued, and premium was paid on the last of the month. Said Beach did not claim the preminms until the last of the month and not until he made his report.

On cross-examination witness, E. A. Cooley, testified as follows:

Interrogatory 1st. If you have stated in your direct examination anything concerning the nature of the relation of James A. Beach to the Home Insurance Company of New York, please state how you learned the nature of such relation, and from what fact you infer it.

Answer. By transacting insurance business with him, he having furnished me with rates of insurance from the company, receiving money for premiums from me for the company, and from seeing the company's books in his office, and company's sign over his office door.

Interrogatory 2d. Did you ever know of said Beach issuing a policy of insurance or agreeing to issue a policy of insurance on flouring-mill
152 property without express and special authority from the general agency at Chicago, Illinois? Did he ever, to your knowledge, claim or hold himself out as having authority so to do? If you say he did so issue or so hold himself out, state where and in what instance, and what he said or did.

Answer. I do not know of said Beach issuing a policy of insurance nor agreeing to issue a policy on flouring-mill property without express authority from the general agency at Chicago. I don't know that he ever claimed to me or held himself out as having such authority.

Interrogatory 3d. Were you present when the application in question in this suit was filled up—the application of Oct. 12th, 1872, in the Home Insurance Company?

Answer. I was not.

Interrogatory 4th. Did not the policy issued to Cooley in 1870 issue in pursuance of authority sent to Beach, on an application in form like that of Oct. 12th, 1872? If not, what were the facts on this point?
153 Answer. I made the first application myself. The second was made by my partner, in accordance with instructions from me. I never saw the second application; do not know.

Interrogatory 5th. When did you make the agreement with Best and Sparks, under which you went into the mill? How long before your partnership with Eames began?

Ans. I made the agreement with Best and Sparks about the 5th day of December, A. D. 1869. It was about two years before my partnership with Eames began.

Interrogatory 6. Did you have any interview or conversation on business with Mr. Beach in October, 1872? if so, when and where was it, and who was present? Give day of month and the house in which it occurred, if you say such took place during that month.

Answer. I think I had no conversation with Mr. Beach on business in Oct., 1872, but cannot say positively, but am pretty certain I had not.

154 Interrogatory 7. What is your present occupation, and when did you leave Illinois?

Answer. My occupation is minister of the Gospel. I left Illinois Dec. 2d, 1873.

Interrogatory 8. When did you last see Mr. Beach to converse with him?

Ans. I do not know.

E. A. COOLEY.

Sworn to before me and subscribed in my presence by the said E. A. Cooley this 19th day of Jan., A. D. 1874.

[SEAL.] I. B. B. BAKER,

Notary Public in and for the County of Allamakee, Iowa.

In the circuit court, in chancery.

UNITED STATES OF AMERICA,
Southern District of Illinois:
JAMES B. EAMES ET . }
vs.
HOME INSURANCE COMPANY, NEW YORK. }

155 Interrogatories to be proposed to E. A. Cooley as witness in the case before R. W. McWilliams, commissioner, at his office in Litchfield.

Interrogatory 1st. Your name, age, occupation, residence?
" 2nd. Are you acquainted with the parties to this suit?
" 3d. Are you acquainted with Eames & Beach of Bunker Hill, Illinois, and, if so, do you know what relation he sustains, if any, to defendants?
" 4th. What knowledge, if any, did said Beach have Oct. 12th, 1872, of the title to flouring-mill at Staunton, the mill in question?
" 5th. Do you know of defendant carrying any risk or insurance on said flouring-mill prior to Oct. 12th, 1872, for complainants, or either of them; and, if so, state if you know by whom and to whom the premium was paid, and at what time in reference to issuing and delivering the policies to complainants or either of them?

Cross-interrogatories to the above are to be filed and examination of witness by agreement.

B. F. BURNETT,
156 *Solicitor for Complainant.*

I agree that the examination of said witness may be taken on the above and the annexed interrogatories at Rossville, Al'amakee County, Iowa, before any notary public of that county.

GEO. L. PADOCK, *for Deft.*

Cross-interrogatories to be put to E. A. Cooley at Rossville, Al'amakee County, Iowa.

1. If you have stated in your direct examination anything concerning the nature of the relation of James A. Beach to the Home Insurance Company, please state how you learned the nature of such relations, and from what fact you infer it.

2. Did you ever know of said Beach issuing a policy of insurance or agreeing to issue a policy of insurance on flouring-mill property without express and special authority from the general agency at Chicago? Did he ever to your knowledge claim or hold himself out as having authority so to do? If you say he did so issue or so held himself
157 out, state when and in what instance & what he said or did.

3. Were you present when the application in question in this suit was filled up, the application of Oct. 12, 1872, in the Home Ins. Co.?

4. Did not the policy issued to Cooly in 1870 issue in pursuance of authority sent to Beach on an application in form like that of Oct. 12, 1872? If not, what were the facts on this point?

5. When did you make the agreement with Best and Sparks under which you went into the mill? How long before your partnership with Eames began?

6. Did you have any intention or conversation on business with Mr.

Beach in October, 1872? If so, when was it, and when and who was present? Give day of month and the house in which it occurred, if you say such took place during that month.

7. What is your present occupation, and when did you leave Illinois?

8. When did you last see Mr. Beach to converse with him?

GEO. L. PADOCK,
Solr. for Deft.

(Endorsed:) Filed June 1st, 1874. J. A. Jones, clk.

158 *Application of Ames & Cooly for insurance.*

No. 105. HOME INSURANCE COMPANY, CITY OF NEW YORK.

Survey and diagram of flouring-mill at Staunton, State of Illinois, on which insurance is to be predicated, viz:

	Valuation.	Sum to be insured.	Rate.
On their frame steam flouring-mill	$6,000	$2,000	5½
On mill machinery therein, (not boiler & engine)	$6,000	$2,000	5½
On	$	$	
On	$	$	

The applicant will answer, particularly, the following questions, and sign the same, as descriptive of the premises, and forming a part of the contract of insurance and a warranty on his part:

1. Name of the mill—is it a flouring-mill or a grist-mill for custom only?	1. "Harvest Home Mills." Flouring-mill.
When built?	
2. Building—is it of stone, brick, or wood?	2. Wood.
Of what material is the roof?	Shingles.
Size and number of stories high?	36 x 56, 3 story and basement.
How high between joints?	1 story, 12; 1, 14; garret, ½ story.
Is the frame-work substantial, so that the shafting runs true?	Yes.
Has any part settled or sagged? If so, state all about it particularly.	No.
3. Ladders—are there any on the building, or at hand, of sufficient length to reach the windows in each story and the roof, and ready for use at all times? If so, how many?	3. Yes. One to each of them besides stairway.
159	
4. Motive-power—water or steam? If water, is the supply sufficient?	4. Steam.
If by steam, where is the engine and boiler situated?	In shed building on the east end.
How thick are the walls enclosing the boiler?	18 inches.

How far from wood-work over head and sides?	Nearest, 4 feet, over head. Not near on the sides.
Is it a single or return-flue boiler?	Tubular boiler, 44 tubes.
Is an engineer constantly employed?	Yes.
And does he attend to any other duty when the engine is in use?	No.
What fuel is used?	Coal and wood.
5. Boiler-chimney—is it in the building? If not, where is it?	5. No.
(Show the location on the diagram.)	
How high is it?	About 60 feet.
Is it of brick or iron?	Brick.
How thick are the walls?	
Is it built double, with hollow walls?	Yes.
Is it plastered inside and outside?	On inside.
Do the floors or floor-timbers or roof come in contact with it? If not, what space intervenes?	No; built near the boiler-house, but roof is iron next to chimney.
160 6. Stoves—how many in the buildings and adjoining premises?	One.
What kind, and where situated?	Cannon, coal, in office, built on north side of mill.
Are they sound and in good order?	Yes.
What is under them?	Brick.
How far from partition or woodwood?	About 4 feet.
Are there any other fires used about the premises?	
If so, for what purpose, and how secured?	
What kind of fuel is used?	Coal.
7. Stove-pipes—are they in good order and well secured?	7. Yes.
Do any of them pass a partition or floor? If so, how secured, and how near do they come to woodwork? Do any of them pass out of the building without entering a chimney? If so, how are they secured?	No. No; goes direct into chimney.
8. How many runs of stone?	8. 3 on flour; 1 small on corn.
9. Smut-mill. Where is it located?	Upper story.
Whose pattern is it?	Vandergrift.
How many revolutions does it make per minute?	550.
161 What portion of the time is it in operation? Will you agree to clean it out carefully every day?	Yes.
10. Bearings—does any part of	10. No.

the machinery or shafting run in wooden boxes at a greater rate of speed than 100 revolutions per minute?

What material is used for lubricating or oiling the bearings and machinery? Will you agree to keep all the bearings and machinery properly supplied with oil?

Lard oil.

Yes.

11. Watchman—is a watch kept on the premises during the night? And at all other times when the mill is not in operation, or when the workmen are not present? Is there a good watch clock? Is any other duty required of the watchman than watching for the safety of the premises?

No.

12. Forcing-pump—is there a good forcing-pump on the premises, designed expressly for putting out fire, and at all times in condition for use?

How often is it tried to know that it is in order?

Where is the force-pump located?

162 Is it driven by gears or belts?

Can it be put in operation inside and outside the building?

How much water will it throw per minute?

Will it throw water over the peak of the highest portion of the building?

Is there hose kept in each story of the building, attached to the pump, always ready for use? If so, how much, and where is it located?

Are there casks in each loft constantly filled with water? If there are, how many and what is their capacity?

How many buckets to each cask, and are they always kept in a convenient place for use, in case of fire?

12. No.

13. Hours of work. During what hours does the mill run?

Is any other business carried on in it?

13. Every day, and a good deal of the time night and day.

No.

14. Light—what material is used for lighting the buildings?

14. Coal oil.

15. Friction matches. Are they

15. Yes; in small quantities for

kept in the buildings? If so, in what manner?

16. Ashes. How are they disposed of? Will you agree that they should not be kept in wooden vessels in the buildings, or near enough to endanger them?

16. Wheeled away from the building.

Yes.

17. Cash value. What is the cash value of the property to be insured, including only the building or buildings above the foundation, and the machinery.

What is the average value of grain and flour in the mill.

17. $12,000 $

18. Ownership. Is the mill owned and operated by the applicant.

18. Yes.

Is there any other person interested in the property?

Yes, as mortgagee.

If so, state the interest.

Is the property rented or leased?

Lien on mill to secure payment of sale.

If so, state how long.

19. Incumbrance. Is there any incumbrance on the property?

19. Yes.

If mortgaged, state the amount.

$6,000.

Is there any insurance by the mortgagee?

No.

20. Other Insurance. What amount is now insured on the property? Building and stock separately.

20. $4,000, $2,000 on building, $2,000 on mill machinery.

In what offices, and on whose account; specify particularly?

Phœnix, of Hartford, by applicant—5½.

21. Incendiarism. Have you any reason to believe that your prosperty is in danger from incendiarism?

21. No.

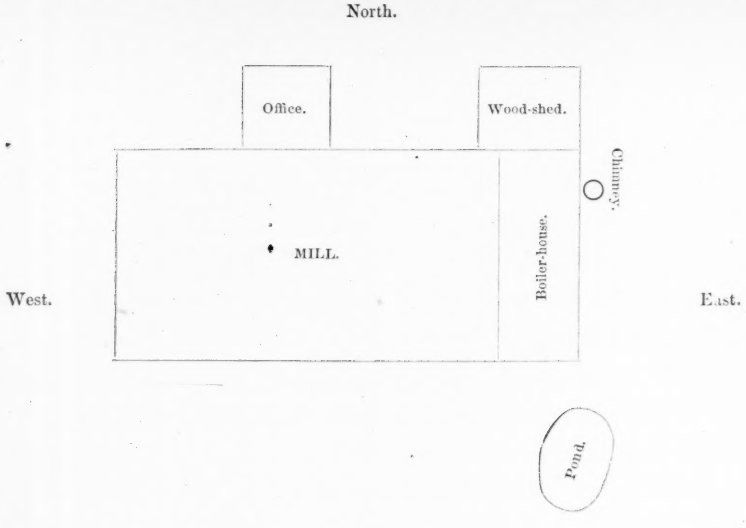
22. Description of diagram. Description and distance of adjacent buildings? of what materials built? size, height, and how occupied.

Diagram to be made on this page, of the buildings to be insured, and of all buildings within 100 feet of same.

23. Signature. The survey, in all cases, to be signed by the applicant, or some person duly authorized by him. ☞ In no case by the agent effecting the insurance.

use in office and engine-room.

DIAGRAM.



Dated at Bunker Hill, Ill., this 12th day of October, 1872.

EAMES & COOLEY,
Applicant.

(Indorsed:) Eames & Cooley v. Home Ins. Co. No. 105. Flouring-mill, Bunker Hill, Ills. Exhibit F, R. McW. Exhibit 1, I. H. T., N. P.

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166 STOCK COMPANY.—CASH CAPITAL, $2,500,000.

No. 26598.] [$1,000.

By this policy of insurance, the Home Insurance Company, of the city of New York, in consideration of eleven & $\frac{50}{100}$ dollars, to them paid by the insured hereinafter named, the receipt whereof is hereby acknowledged, do insure Paddock and Ide against loss or damage by fire, to the amount of one thousand dollars on law and other printed books, their own jointly or severally, or held by them in trust contained in room 10 of the brick and stone building, situate on the southwest corner of Dearborn and Washington streets, and known as Kendall's building, Chicago, Illinois.

DECEMBER 28th 1872.—The form of this policy is changed to read as follows:

$750 on law and other printed books, their own jointly or severally, or held by them in trust, and 250 on law-office furniture, useful and ornamental, fixtures and gas-fixtures contained in room 10 of the brick

and stone building, situate on the southwest corner of Dearborn and Washington streets, and known as Kendall's building, Chicago Illinois.

A. C. DUCAT, *Agt.*
W. H. D.

Sum insured, $1,000.
Time, 1 year.
Rate, 1 1-5.
Premium, 11.50.

And the said Home Insurance Company hereby agree to make good unto the said assured, their executors, administrators, and assigns, all such immediate loss or damage, not exceeding in amount the sum or sums insured, as above specified, nor the interest of the assured in the property, except as herein provided, as shall happen by fire to the property so specified, from the seventeenth day of November, one thousand eight hundred and seventy-two, at twelve o'clock at noon, to the seventeenth day of November, one thousand eight hundred and seventy-three, at twelve o'clock at noon; the amount of loss or damage to be estimated according to the actual cash value of the property at the time of the loss, and to be paid sixty days after due notice and proofs of the same shall have been made by the assured and received at the office of the company in New York, in accordance with the terms and provisions of this policy, unless the property be replaced, or the company shall have given notice of their intention to rebuild or repair the damaged premises.

1. If an application, survey, plan, or description of the property herein insured is referred to in this policy, such application, survey, plan, or description shall be considered a part of this contract, and a warranty by the assured; and any false representation by the assured of the condition, situation, or occupancy of the property, or any omission to make known every fact material to the risk, or an over-valuation, or any misrepresentation whatever, either in a written application or otherwise; or if the assured shall have, or shall hereafter make any other insurance on the property hereby insured, or any part thereof, without the consent of the company written hereon; or if the above-mentioned premises shall be occupied or used so as to increase the risk, or become vacant or unoccupied, and so remain with the knowledge of the assured without notice to, and consent of, this company in writing, or the risk be increased by the erection or occupation of neighboring buildings, or by any means whatever within the control of the assured, without the assent of this company endorsed hereon; or if it be a manufacturing establishment running in whole or in part over, or extra time, or running at night, or if it shall cease to be operated, without special agreement endorsed on this policy; or if the property be sold or transferred, or any change takes place in title or possession, (except by succession by reason of the death of the insured,) whether by legal process, or judicial decree, or voluntary transfer, or conveyance; or if this policy shall be assigned before a loss without the consent of the company endorsed hereon; or if the interest of the assured in the property, whether as owner, trustee, consignee, factor, agent, mortgagee, lessee, or otherwise be not truly stated in this policy; or if the assured shall keep gunpowder, fire-works, nitro-glycerine, phosphorus, saltpetre, nitrate of soda, petroleum, naphtha, gasoline, benzine, benzole, or benzine varnish, or keep or use camphine, spirit-gas, or any burning-fluid or chemical oils, without written permission in this policy; then, and in every such case, this policy shall be void. Kerosene oil, however, may be used for lights in dwellings, stores, churches, and school-houses and kept for sale in stores in quantities not exceeding five barrels, to be drawn by daylight only.

2. This insurance does not apply to or cover jewels, plate, watches,

musical or scientific instruments, (piano-fortes in dwellings excepted,) ornaments, medals, patterns, printed music, printed books, engravings, paintings, picture-frames, sculpture, casts, models, or curiosities, unless particularly specified in this policy. This company shall not be liable by virtue of this policy, or any renewal thereof, until the premium therefor be actually paid; nor for loss by theft at or after a fire; nor for money or bullion, bills, notes, accounts, deeds, evidences of debt, or securities of property of any kind; nor for any loss or damage by fire caused by means of an invasion, insurrection, riot, civil commotion, or military or usurped power; nor for any loss in buildings unprovided with good and substantial stone or brick chimneys, the absence of which has been the cause of the fire; nor in consequence of any neglect or deviation from the laws or regulations of police, where such exist; nor for any loss caused by the explosion of gunpowder, or any explosive substance; nor by lightning or explosions of any kind, unless fire ensues, and then for the loss or damage by fire only, which loss shall be determined by the value of the damaged property after the casualty by explosion or lightning.

3. If a building shall fall, except as the result of a fire, all insurance by this company on it or its contents shall immediately cease and determine.

4. If the interest of the assured in the property be any other than the entire, unconditional, and sole ownership of the property, for the use and benefit of the assured, or if the building insured stands on leased ground, it must be so represented to the company and so expressed in the written part of this policy, otherwise the policy shall be void. When property has been sold and delivered, or otherwise disposed of, so that all interest or liability on the part of the assured herein named has ceased, this insurance on such property shall immediately terminate. Goods held on storage must be separately and specifically insured.

5. In case the use or occupation of the above-mentioned premises, at any time during the period for which this policy would otherwise continue in force, shall be so changed as to increase the risk thereupon, except as may be hereafter agreed to by this corporation, in writing, upon this policy, from thenceforth, so long as the same shall be so used, this policy shall be of no force or effect.

6. The best endeavors of the assured shall be used in saving and protecting the property from damage at and after the fire; and in case of failure so to do, this company will not be liable for damage caused by such failure; and there can be no abandonment to the company of the property insured.

The use of general terms, or anything less than a distinct, specific agreement, clearly expressed and endorsed on this policy, shall not be construed as a waiver of any printed or written condition or restriction therein.

7. In case of any other insurance upon the property hereby insured, whether made prior or subsequent to the date of this policy, the assured shall be entitled to recover of this company no greater proportion of the loss sustained than the sum hereby insured bears to the whole amount insured thereon; and it is hereby declared and agreed that in case of the assured holding any other policy in this or any other company on the property insured, subject to the conditions of average, this policy shall be subject to average in like manner. Any floating policy attaching, in whole or in part, to the property covered by this policy, shall, as between the insured and this company, be considered as con-

tributing insurance for the full amount of such policy, and liable as such to pay pro rata any loss, total or partial, on the property hereby insured.

Re-insurance, in case of loss, to be settled in proportion as the sum re-insured shall bear to the whole sum covered by the re-insured company.

8. This insurance may be terminated at any time at the request of the assured, in which case the company shall retain only the customary short rates for the time the policy has been in force. The insurance may also be terminated at any time at the option of the company, on giving notice to that effect, and refunding a rateable proportion of the premium for the unexpired term of the policy.

9. Persons sustaining loss or damage by fire shall forthwith give notice of said loss to the company, and, as soon thereafter as possible, render a particular account of such loss, signed and sworn to by them, stating whether any and what other insurance has been made on the same property, giving copies of the written portion of all policies thereon, also the actual cash-value of the property and their interest therein, for what purpose and by whom the building insured, or containing the property insured, and the several parts thereof, were used at the time of the loss, when and how the fire originated, and shall also produce a certificate under the hand and seal of a magistrate or notary public (nearest to the place of the fire, not concerned in the loss as a creditor or otherwise, nor related to the assured,) stating that he has examined the circumstances attending the loss, knows the character and circumstances of the assured, and verily believes that the assured has, without fraud, sustained loss on the property insured to the amount which such magistrate or notary public shall certify. The assured shall, if required, submit to an examination or examinations under oath, by any person appointed by the company, and subscribe to such examinations when reduced to writing, and shall also produce their books of account and other vouchers, and exhibit the same for examination at the office of the company, and permit extracts and copies thereof to be made; the assured shall also produce certified copies of all bills and invoices, the originals of which have been lost, and shall exhibit all that remains of the property which was covered by this policy, damaged or not damaged, for examination to any person or persons named by the company.

When personal property is damaged the assured shall forthwith cause it to be put in order, assorting and arranging the various articles according to their kinds, separating the damaged from the undamaged, and shall cause an inventory to be made, and furnished to the company of the whole, naming the quantity, quality, and cost of each article. The amount of sound value and of damage shall then be ascertained by appraisal of each article by competent persons (not interested in the loss as creditors or otherwise, nor related to the assured or sufferers,) to be mutually appointed by the assured and the company; their report, in writing, to be made under oath before any magistrate or other properly commissioned person; one-half of the appraiser's fees to be paid by the assured. The company reserve the right to take the whole or any part of the articles at their appraised value; and until such proofs, declarations and certificates are produced, and examinations and appraisals permitted by the claimant, the loss shall not be payable.

In case of loss on property held in trust, or on commission, or if the interest of the assured be other than the entire and sole ownership, the names of the respective owners shall be set forth, together with their respective interests therein. If this policy is made payable, in case of loss, to a third party, or held as collateral security, the proofs of

loss shall be made by the party originally insured, unless there has been an actual sale of the property insured. All fraud, or attempt at fraud, by false swearing or otherwise, shall cause a forfeiture of all claim on this company under this policy.

But, provided, in case differences shall arise touching any loss or damage after proof thereof has been received in due form, the matter shall, at the written request of either party, be submitted to impartial arbitrators, whose award in writing shall be binding on the parties as to the amount of such loss or damage, but shall not decide the liability of the company under this policy; and, provided further, that it shall be optional with the company to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time, giving notice of their intention so to do within thirty days after receipt of the proofs herein required; and in all cases whether this company elect to rebuild or not, the assured shall, if required, furnish plans and specifications of the buildings destroyed.

The cash-value of property destroyed or damaged by fire shall in no case exceed what would be the cost to the assured, at the time of the fire, of replacing the same; and in case of the depreciation of such property, from use or otherwise, a suitable deduction from the cash cost of replacing shall be made, to ascertain the actual cash-value.

Where property insured by this company is damaged by removal from a building in which it is exposed to loss by fire, said damage shall be borne by the insured and the insurers, in such proportion as the whole sum insured bears to the whole value of the property insured, of which proof in due form shall be made by the claimant.

10. This insurance (the risk not being changed) may be continued for such further time as shall be agreed on, provided the premium therefor is paid and endorsed on this policy, or a receipt given for the same, and it shall be considered as continued under the original representation, and for the original amounts and divisions, unless otherwise specified in writing; but in case there shall have been any change in the risk, either within itself or by neighboring buildings, not made known to the company by the assured at the time of renewal, this policy and renewal shall be void.

11. It is a part of this contract that any person other than the assured who may have procured this insurance to be taken by the company, shall be deemed to be the agent of the assured named in this policy and not of this company under any circumstances whatever in any transaction relating to this insurance.

12. It is furthermore hereby expressly provided and mutually agreed, that no suit or action against this company, for the recovery of any claim by virtue of this policy, shall be sustainable in any court of law or chancery, unless such suit or action shall be commenced within twelve months next after the loss shall occur; and should any suit or action be commenced against this company after the expiration of the aforesaid twelve months, the lapse of time shall be taken and deemed as conclusive evidence against the validity of such claim, any statute of limitation to the contrary notwithstanding.

☞ GAS.—The generating or evaporating within the buiding or contiguous thereto, of any substance for a burning-gas, or the use of gasoline for lighting, is prohibited under this policy, unless permitted in writing hereon.

☞ Fences and other yard-fixtures, also store furniture and fixtures, are not insured under the within policy, unless separately and specifically mentioned.

☞ Plate-glass doors and windows, when the plates are of the dimensions of nine square feet or more, are not covered by insurance on the building, but must be separately and specifically insured.

☞ Frescoed work, or gilding on walls or ceilings, is not covered by insurance on the building, but must be separately and specifically insured.

☞ BUILDERS' RISK.—The working of carpenters, roofers, tinsmiths, gas-fitters, plumbers, or other mechanics, in building, altering or repairing the premises named in this policy, will vitiate the same, unless permission for such work be endorsed in writing hereon, except in dwelling-houses only, where five days are allowed in any one year for incidental repairs, without notice or endorsement.

☞ And it is hereby understood and agreed, by and between this company and the assured, that this policy is made and accepted in reference to the foregoing terms and conditions, and to the classes of hazards and memoranda printed on the back of this policy, which are hereby declared to be a part of this contract, and are to be used and resorted to, in order to determine the rights and obligations of the parties hereto, in all cases not herein otherwise specially provided for in writing.

In witness whereof the Home Insurance Company have caused these presents to be signed by their president, and attested by their secretary, in the city of New York. But this policy shall not be valid unless countersigned by the duly authorized agent of said Home Insurance Company at Springfield, Ill.

CHAS. J. MARTIN,
President.

J. H. WASHBURN,
Secretary.

Countersigned at Chicago, this 17th day of November, 1872.
ARTHUR C. DUCAT, *Agent.*

Classes of Hazards.

HAZARDOUS.

Bristles and hair-cloth, (wholesale.)
Boots and shoes, (wholesale,) including India-rubber boots and shoes.
Carpets, (retail stocks of.)
Card-printing, (by hand-power.)
Carriage-trimmings.
Carriages and sleighs.
Clothing, (wholesale stocks of,) ready-made.
Coffee.
Cordage.
Cotton batts and wadding.
Cotton yarn.
Dry goods, foreign and domestic, exclusively in unbroken and unopened packages.
Dry goods, (wholesale stocks of.)
Drugs, dry in packages, (importers' stocks of.)
Flax, in bales.
Fire-crackers, in packages.
Flocks.
Flour.
Fruits, (wholesale stocks of.)
Furs and peltries, in unbroken packages.
Furs, unpacked.
Grocers' stocks.
Grocers' stocks, (retail.)
Glass, window, in boxes.
Gum copal.
Gum shellac.
Gunny-cloth and gunny-bags.
Gutta-percha, unmanufactured.
Hardware, staple, in packages.
Hatters' furs, (stocks of.)
Hats and caps, (wholesale stocks of,) without manufacturing.
Hemp, in bales.
Hides and sole-leather.
Hops, in bales.
India rubber, unmanufactured.
Indigo.
Ironware, wholesale, (also stoves, tinware, and hollow ware.)
Iron goods, ornamental, japanned, and bronzed, (stocks of.)
Leather, morocco, and findings.
Machinery, (stocks of,) on sale.
Manilla grass, in bales.
Men's straw hats and caps, (stocks of.)

Nails, (stocks of.)
Oakum, in bales.
Oil, (fish and vegetable.)
Oil-cloths, (stocks of.)
Paints, ground in oil.
Paper in reams, and straw boards.
Paper-hangings, (wholesale.)
Pins, (stocks of.)
Pot, pearl, and soda ashes.
Provisions.
Rice.
Saddlery and harness, (stocks of.)
Sail-making.
Salt.
Sewing-machines, (stocks of.)
Sisal grass, in bales.
Spices.
Sugars.
Sulphur.
Tallow.
Teas.
Threshed grain.
Tobacco, plug and twist, in boxes or kegs, (wholesale.) [See Extra hazardous.]
Trunks, (stocks of.)
Whalebone.
Whiskey, in barrels, (stocks of.)
Wool.
Wines and liquors, in packages, (importers stocks of.)

EXTRA HAZARDOUS.

Artificial flowers.
Artists' materials.
Auction-stores.
Agricultural implements, including seedmen's stocks.
Alcohol.
Apothecaries' stocks.
Asphaltum.
Bandboxes, (stocks of.)
Book-sellers' stocks.
Boots and shoes, (retail.)
Brushes, (stocks of.)
Bag-making (cloth) by hand-power.
Bakeries with ovens outside the building, and using coal only.
Basket-selling.
Billiard-saloons and contents.
Blacksmith shops.
Boot and shoe manufacturing by hand-power only.
Bottling-cellars.
Brush-makers' stock.
Cabinetware, without manufacturing, repairing, upholstering, or varnishing.
Carving, by hand-power.
China, unpacked.
Clothing, ready-made, (retail stocks of,) also merchant tailors.
Confectioners' stocks.
Corks, (stocks of.)
Car-springs, (gutta-percha or India rubber.)
China, or earthen or glass ware, (wholesale and retail stocks of,) with privilege of packing or unpacking.
Copper-plate printing.
Coopers' shops, (strapping boxes only.)
Corset-making.
Daguerreotype and photographic stocks.
Daguerreotype and photographic establishments.
Dress-trimmings, (stocks of.)
Dry goods, (retail stocks of.)
Earthenware, (unpacked.)
Eating-houses.
Electroplating.
Essential oils.
Fancy goods, (wholesale and retail stocks of.)
Feathers, stocks of.)
Fishing-tackle.
Fringes, (stocks of.)
Fringe-making, by hand-power.
Fruits, (retail stocks of.)
Furriers' and hatters' stocks, unpacked.
Furs, cutting and sewing, without fire-heat.
Gas-fitting.
Gas-fixtures.
Gentlemen's furnishing goods, (wholesale and retail stocks of.)
Gimps, (stocks of.)
Glass, window or plate, unpacked.
Glassware, unpacked; looking-glasses, unpacked.
Gilding.
Gun-repairing.
Gutta-percha goods, except boots and shoes.
Hardware and cutlery.
Hats and caps, (retail,) without manufacturing.
Hat (straw, grass, or chip) bleaching.
Hay and straw, pressed in bundles.
Hoop-skirts and hoop-skirt materials, (stocks of.)
Hoop-skirt manufacturing by hand, without fire-heat.
House-furnishing goods, (retail stocks of.)
India-rubber goods, (stocks of,) except boots and shoes.
Iron, (hoop, sheet, and rod.)
Jewelers' and watch-makers' stocks.
Kid gloves, (stocks of.)
Ladies and children's furnishing goods, (stocks of.)
Laces and embroideries, (wholesale.)
Lamp-sellers' stocks, without camphene, burning-fluid, spirit-gas, or kerosene.
Lager-bier saloons.
Lime, unslacked, (stocks of.)
Liquors, in glass, unpacked.
Lithographers.
Looking-glasses, (stocks of,) with privilege of packing or unpacking.
Map mounting and varnishing.
Matches, on sale, (stocks of)
Metals, in bars, pig and tin plates.
Military goods, (stocks of.)
Millinery goods, (wholsale and retail stocks' of.)
Needles, (stocks of.)
Optical and mathematical instrument makers stocks.
Painters' stocks.
Paper-hangings, (retail stocks.)
Paper collars.
Paper boxes, (stocks of.)

Pawnbrokers' stocks.
Perfumers' stocks.
Precious stones.
Percussion-caps.
Piano-fortes in warerooms.
Picture-frame joining.
Pitch.
Plumbing and pewtering.
Pocket-book makers' stock.
Pocket-book making, (without use of fire-heat.)
Porter-houses, bar-rooms, sample-rooms, and retail liquor-stores.
Rags, in bales.
Rectifying liquors by cold process only.
Refectories.
Restaurants.
Resin.
Saddlery and harness manufacturing.
Sheet-iron, and copperware, (retail.)
Shirt-manufactories, (without ironing.)
Ship-chandlery.
Sliversmiths' stocks.
Silver and plated ware.
Spirits of turpentine.
Stationers' stock.
Stoves, (retail stocks of.)
Straw goods, (wholesale and retail stocks of.)
Tar.
Tailors' trimmings, (stocks of.)
Tin and hollow ware, (retail.)
Tin or sheet-iron or copper working.
Tobacco, leaf and cut, cigars and snuff, (wholesale and retail.)
Tow, in bales.
Turpentine.
Umbrellas and parasols, (wholesale and retail,) with privilege to put together and finish by hand only.
Upholsterers' stocks.
Watch-makers' tools.
Watches, in packages, as imported.
Wine, in glass, unpacked.
Worsteds and fancy wools, (importers' stocks of.)
Yankee notions.

SPECIALLY HAZARDOUS.

Acids, (nitric, sulphuric, muriatic, and other acids causing ignition.)
Band-box and paper-box making.
Bakeries, ovens within the building, or using wood or shavings.
Bark-mills.
Bellows making.
Bleaching works.
Blind-makers' shops.
Blacksmithing.
Block and pump making.
Boat-builders' shops.
Book-binderies.
Boot and shoe manufactories, with fire-heat.
Box repairing.
Brass foundries.
Breweries.
Brick-yards, with kilns.
Brimstone works.
Brush manufactories.
Burning fluid.
Cabinet-makers' shops.
Cabinet ware, (stocks of,) with privilege to varnish and upholster.
Candle manufactories.
Camphene, on sale.
Cap manufactories.
Carpenters' shops.
Chair-makers' shops.
Chemical laboratories.
Coach-makers' shops.
Coffee and spice mills.
Comb manufactories.
Confectionery manufactories.
Coopers' shops.
Coppersmiths' shops, with forges.
Corn-kilns.
Cotton-mills.
Cotton-presses.
Cotton, in bales.
Cotton, unpacked.
Distilleries and rectifying establishments.
Drug-stores, with privilege of compounding.
Druggists' stock, (wholesale.)
Drug and spice mills.
Dyeing establishments.
Ether.
Fire-works.
Fire-work manufactories.
Flax-mills.
Flax, unpacked.
Floor-cloth manufactories.
Fringe manufactories.
Fulling-mills.
Fur-dressing establishments.
Gas-fixtures manufactories.
Gas manufactories.
Glass manufactories.
Gold-pen making.
Grate manufactories.
Grist or flouring mills.
Gun manufactories.
Gunpowder.
Hat manufactories.
Hay, unpacked.
Hay presses.
Hemp manufactories.
Hoop-skirt manufactories, by machinery or fire-heat.
Hemp, unpacked.
Hotels.
Houses, building or repairing.
Ink manufactories.
India-rubber and gutta-percha manufactories.
Iron foundries.
Ivory-black and lamp-black manufactories.
Japanning.
Jewelry manufactories.
Jewelry-case making.
Junk shops.
Lamp manufactories.
Lamp-sellers' stocks, (with privilege of keeping camphene or kerosene.)
Laundries.
Lime yards and sheds.
Lime, unslacked.
Livery stables.

Looking-glass and picture-frame manufactories.
Lumber-yards.
Machine-shops.
Manilla grass unpacked.
Mahogany-yards.
Malt-houses.
Match manufactories.
Metal mills.
Musical instrument manufactories.
Musical instruments, (stocks of.)
Mungo.
Nitrate of soda.
Oiled-clothing manufactories.
Oiled-clothing, (stocks of.)
Oil-mills and manufactories.
Oils, resin, and similar.
Oil refineries.
Omnibus stables.
Packing buildings and yards.
Paper-bag manufactories.
Paper-hanging manufactories.
Paper-mills.
Percussion-cap manufactories.
Perfumery manufactories.
Phosphorus.
Pictures and prints.
Planing, or grooving or moulding mills.
Plaiting.
Plated-ware manufacturing.
Pocket-book making.
Pork-houses.
Powder-mills.
Printed music.
Printing of books and job printing.
Print works.
Provisions in process of being smoked.
Rag stores.
Rags and paper stock.
Rolling-mills.
Rope and cordage manufactories.
Safe (iron) manufactories.
Saltpetre.
Sash-makers' shops.
Saw-mills.
Segar manufactories.
Ship-building or repairing.
Shoddy.
Silversmiths' manufactories.
Smoke-houses.
Snuff-mills.
Soap manufactories.
Spirit-gas manufactories and spirit-gas on sale.
Stave-yards.
Steamboats.
Steam-boilers in use.
Steam-engines in use.
Stove manufactories.
Sugar refineries.
Tallow-melting establishments.
Tanneries.
Tar-boiling establishments.
Taverns.
Theatres & other places of public exhibit'n.
Timber-yards.
Tobacco manufactories.
Tow, unpacked.
Toys, (shop-keepers' stocks of.)
Trunk-making.
Turpentine distilleries.
Type and sterreotype foundries.
Umbrella manufactories.
Upholstery manufactories.
Varnish manufactories.
Wheelwrights' shops.
Window-shade painting.
Wood and willow ware, (stocks of.)
Woolen mills.
Wool-waste.

And generally all workshops, mills, and manufacturing establishments, and all trades and occupations requiring the use of fire-heat not above enumerated as hazardous or extra hazardous.

The Home Insurance Company hereby consent that the interest of , in the within policy, subject to all the terms and conditions therein mentioned and referred to, be assigned to , 187

Agent.

For value received, hereby transfer, assign, and set over unto and assigns, all , title and interest in this policy, and all advantage to be derived therefrom.

Witness hand and seal this day of 187 .

Sealed and delivered in presence of—

[L. S.]

[Stamp.]

The Home Insurance Company hereby consent that the interest of , in the within policy, subject to all the terms and conditions therein mentioned and referred to, be assigned to , 187

Agent.

For value received, hereby transfer, assign, and set over unto and assigns, all , title, and interest in this policy, and all advantage to be derived therefrom.

Witness hand and seal this day of 187 .

Sealed and delivered in presence of—

[L. S.]

[Stamp.]

DIRECTORS.

George C. Collins, firm of George C. Collins & Co.
Danford N. Barney, president Wells, Fargo & Co.'s Express.
Lucius Hopkins, firm of Hopkins, Dwight & Trowbridge.
Thomas Messenger, president Brooklyn Bank.
William H. Mellen, late firm of Claflin, Mellen & Co.
Homer Morgan, 2 Pine street.
Levi P. Stone, late firm of Stone, Starr & Co.
Ward A. Work, firm of Ward A. Work, Pennell & Foster.
Isaac H. Frothingham, pres't Union Trust Co.
Chas. A. Bulkley, late firm of Bulkley & Co.
George D. Morgan, late firm of E. D. Morgan & Co.
Oliver E. Wood " O. E. Wood & Co.
Alfred S. Barnes, firm of A. S. Barnes & Co.
Levi P. Morton, " Morton, Bliss & Co.
Curtis Noble, late firm of Noble & Douglass.
John B. Hutchinson, firm of J. C. Howe & Co., Boston.
Charles P. Baldwin, " Anderson, Starr & Co.
Amos T. Dwight, " Hopkins, Dwight & Trowbridge.
Henry A. Hurlbut, late firm of Swift, Hurlbut & Co.
Jesse Hoyt, firm of Jesse Hoyt & Co.
William Sturgis, late firm of Sturgis, Shaw & Co.
Charles J. Martin, president.
John R. Ford, president State Bank of New Brunswick.
George T. Stedman, firm of Stedman, Barbour & Herod, Cin.
A. F. Wilmarth, vice-president.
F. H. Cossit, 37 Pine street.
Wm. R. Fosdick, late firm of Wm. R. & Chas. B. Fosdick.
Lewis Roberts, firm of L. Roberts & Co.
Wm. H. Townsend, late firm of Henrys, Smith & Townsend.
P. C. Van Schaick, " Van Schaick & Edwards.
Thos. T. Buckley, firm of Buckley, Welling & Co.
Oliver S. Carter, " Carter, Hawley & Co.
Henry M. Taber, " C. C. & H. M. Taber.
George W. Parsons, " Barney, Butler & Parsons.
Benjamin Tomes, " Tomes, Melvain & Co.
Edwd. A. Quintard, " Quintard, Ward & Co.
Wm. C. Fowler, " Fowler, Crampton & Co.
D. A. Heald, 2d vice-president.
Ruene Martin, Hartford Carpet Co.
Henry R. Pierson, gen'l sup't N. Y. C. & H. R. R. R. Co.
John Bigelow, late minister to France.
Thomas P. Eldridge, firm of Eldridge, Dunham & Co.
Oliver Hoyt, " Hoyt Brothers.
Joseph Seligman, " J. & W. Seligman & Co.
A. C. Richards, " Fabbri & Chauncey.

THE HOME INSURANCE COMPANY OF THE CITY OF NEW YORK.

Cash capital, $2,500,000.

J. H. WASHBURN, *Secretary.*
CHARLES J. MARTIN, *President.*
GEORGE M. LYON, *Assis't Secretary.*
A. F. WILLMARTH, *Vice-President.*
T. B. GREENE, *2d Assis't Secretary.*
D. A. HEALD, *2d Vice-President.*

☞ If this policy is cancelled, the following receipt is to be filled up and signed by the assured:

187 .

In consideration of dollars, return premium, the receipt of which is hereby acknowledged, this policy is cancelled and surrendered to the Home Insurance Company.

Assured.

(Indorsed:) No. 26598. Home Insurance Company. Office, No. 135 Broadway, New York. Cash capital, $2,500,000. Paddock and Ide, $1,000.00. Premium, $11.50; policy and survey, $. This policy expires November 17th, 1873. ☞ Please read this policy carefully to prevent misunderstanding in case of loss. Ed. May, 1869. Revised Oct., 1871.

EXHIBIT 4.—*J. H. T., N. P.*

167 STOCK COMPANY.—CASH CAPITAL, $2,500,000.

No. 22639. $800.

By this policy of insurance the Home Insurance Company of the city of New York, in consideration of six dollars, to them paid by the insured hereinafter named, the receipt whereof is hereby acknowledged, do insure Paddock and Ide, against loss or damage by fire, to the amount of eight hundred dollars, on printed books, (their own jointly or severally, or held by them in trust,) contained in the two-story and basement brick dwelling situate No. 449 Wabash avenue, Chicago, Ills.

To attach to policy No. 22639, of Home Insurance Co. of New York:

CHICAGO, *September* 27, 1872.

Permission is hereby given to remove the within insured property to the 5-story brick and stone building (room 10) situate S. W. cor. Washington and Dearborn sts., Chicago, Ill., and the same is insured in that only.

A. C. DUCAT, *Agt.*

Sum insured, $800.
Time, 1 yr.
Rate, 75.
Premium, $6.00.
U. S. int. rev., 10 *ten* cents.

And the said Home Insurance Company hereby agree to make good unto the said assured, their executors, administrators, and assigns, all such immediate loss or damage, not exceeding in amount the sum or sums insured, as above specified, nor the interest of the assured in the property, except as herein provided, as shall happen by fire to the property so specified, from the seventeenth day of Novem-

ber, one thousand eight hundred and seventy-one, at twelve o'clock at noon, to the seventeenth day of November, one thousand eight hundred and seventy-two, at twelve o'clock at noon; the amount of loss or damage to be estimated according to the actual cash value of the property at the time of the loss, and to be paid sixty days after due notice and proofs of the same shall have been made by the assured and received at the office of the company in New York, in accordance with the terms and provisions of this policy, unless the property be replaced, or the company shall have given notice of their intention to rebuild or repair the damaged premises.

1. If an application, survey, plan, or description of the property herein insured is referred to in this policy, such application, survey, plan, or description shall be considered a part of this contract, and a warranty by the assured; and any false representation by the assured of the condition, situation, or occupancy of the property, or any omission to make known every fact material to the risk, or an overvaluation, or any misrepresentation whatever, either in a written application or otherwise; or if the assured shall have, or shall hereafter make, any other insurance on the property hereby insured, or any part thereof, without the consent of the company written hereon; or if the above-mentioned premises shall be occupied or used so as to increase the risk, or become vacant or unoccupied, and so remain, with the knowledge of the assured, without notice to, and consent of, this company in writing, or the risk be increased by the erection or occupation of neighboring buildings, or by any means whatever within the control of the assured, without the assent of this company endorsed hereon; or if it be a manufacturing establishment running in whole or in part over, or extra time, or running at night, or if it shall cease to be operated, without special agreement endorsed on this policy; or if the property be sold or transferred, or any change takes place in title or possession, (except by succession by reason of the death of the insured,) whether by legal process or judicial decree, or voluntary transfer or conveyance; or if this policy shall be assigned before a loss without the consent of the company endorsed hereon; or if the interest of the assured in the property, whether as owner, trustee, consignee, factor, agent, mortgagee, lessee, or otherwise be not truly stated in this policy; or if the assured shall keep gunpowder, fire-works, nitro-glycerine, phosphorus, saltpetre, nitrate of soda, petroleum, naphtha, gasoline, benzine, benzole, or benzine varnish, or keep or use camphine, spirit-gas, or any burning-fluid or chemical oils, without written permission in this policy; then, and in every such case, this policy shall be void. Kerosene oil, however, may be used for lights in dwellings, stores, churches, and school-houses, and kept for sale in stores, in quantities not exceeding five barrels, to be drawn by daylight only.

2. This insurance does not apply to or cover jewels, plate, watches, musical or scientific instruments, (piano-fortes in dwellings excepted,) ornaments, medals, patterns, printed music, printed books, engravings, paintings, picture-frames, sculpture, casts, models or curiosities, unless particularly specified in this policy. This company shall not be liable by virtue of this policy, or any renewal thereof, until the premium therefor be actually paid; nor for loss by theft at or after a fire; nor for money or bullion, bills, notes, accounts, deeds, evidences of debt or securities of property of any kind; nor for any loss or damage by fire caused by means of an invasion, insurrection, riot, civil commotion, or military or usurped power; nor for any loss in buildings unprovided with good and substantial stone or brick chimneys, the absence of which

has been the cause of the fire; nor in consequence of any neglect or deviation from the laws or regulations of police, where such exist; nor for any loss caused by the explosion of gunpowder or any explosive substance; nor by lightning or explosions of any kind, unless fire ensues, and then for the loss or damage by fire only, which loss shall be determined by the value of the damaged property after the casualty by explosion or lightning.

3. If a building shall fall, except as the result of a fire, all insurance by this company on it or its contents shall immediately cease and determine.

4. If the interest of the assured in the property be any other than the entire, unconditional, and sole ownership of the property, for the use and benefit of the assured, or if the building insured stands on leased ground, it must be so represented to the company and so expressed in the written part of this policy, otherwise the policy shall be void. When property has been sold and delivered or otherwise disposed of, so that all interest or liability on the part of the assured herein named has ceased, this insurance on such property shall immediately terminate. Goods held on storage must be separately and specifically insured.

5. In case the use or occupation of the above-mentioned premises, at any time during the period for which this policy would otherwise continue in force, shall be so changed as to increase the risk thereupon, except as may be hereafter agreed to by this corporation in writing, upon this policy, from thenceforth, so long as the same shall be so used, this policy shall be of no force or effect.

6. The best endeavors of the assured shall be used in saving and protecting the property from damage at and after the fire; and in case of failure so to do, this company will not be liable for damage caused by such failure; and there can be no abandonment to the company of the property insured.

The use of general terms, or anything less than a distinct, specific agreement, clearly expressed and endorsed on this policy, shall not be construed as a waiver of any printed or written condition or restriction therein.

7. In case of any other insurance upon the property hereby insured, whether made prior or subsequent to the date of this policy, the assured shall be entitled to recover of this company no greater proportion of the loss sustained than the sum hereby insured bears to the whole amount insured thereon; and it is hereby declared and agreed that in case of the assured holding any other policy in this or any other company on the property insured, subject to the conditions of average, this policy shall be subject to average in like manner. Any floating policy attaching, in whole or in part, to the property covered by this policy, shall, as between the insured and this company, be considered as contributing insurance for the full amount of such policy, and liable as such to pay pro rata any loss, total or partial, on the property hereby insured.

Re-insurance, in case of loss, to be settled in proportion as the sum re-insured shall bear to the whole sum covered by the re-insured company.

8. This insurance may be terminated at any time at the request of the assured, in which case the company shall retain only the customary short rates for the time the policy has been in force. The insurance may also be terminated at any time at the option of the company, on giving notice to that effect, and refunding a ratable proportion of the premium for the unexpired term of the policy.

9. Persons sustaining loss or damage by fire shall forthwith give notice of said loss to the company, and, as soon thereafter as possible, render a particular account of such loss, signed and sworn to by them, stating whether any and what other insurance has been made on the same property, giving copies of the written portion of all policies thereon, also the actual cash-value of the property and their interest therein, for what purpose and by whom the building insured, or containing the property insured, and the several parts thereof, were used at the time of the loss, when and how the fire originated, and shall also produce a certificate under the hand and seal of a magistrate or notary public, (nearest to the place of the fire, not concerned in the loss as a creditor or otherwise, nor related to the assured,) stating that he has examined the circumstances attending the loss, knows the character and circumstances of the assured, and verily believes that the assured has, without fraud, sustained loss on the property insured to the amount which such magistrate or notary public shall certify. The assured shall, if required, submit to an examination or examinations under oath, by any person appointed by the company, and subscribe to such examinations when reduced to writing, and shall also produce their books of account and other vouchers, and exhibit the same for examination at the office of the company, and permit extracts and copies thereof to be made; the assured shall also produce certified copies of all bills and invoices, the originals of which have been lost, and shall exhibit all that remains of the property which was covered by this policy, damaged or not damaged, for examination to any person or persons named by the company.

When personal property is damaged the assured shall forthwith cause it to be put in order, assorting and arranging the various articles according to their kinds, separating the damaged from the undamaged, and shall cause an inventory to be made and furnished to the company of the whole, naming the quantity, quality, and cost of each article. The amount of sound value and of damage shall then be ascertained by appraisal of each article by competent persons, (not interested in the loss as creditors or otherwise, nor related to the assured or sufferers,) to be mutually appointed by the assured and the company; their report, in writing, to be made under oath before any magistrate or other properly commissioned person; one-half of the appraisers' fees to be paid by the assured. The company reserve the right to take the whole or any part of the articles at their appraised value; and until such proofs, declarations, and certificates are produced, and examinations and appraisals permitted by the claimant, the loss shall not be payable.

In case of loss on property held in trust, or on commission, or if the interest of the assured be other than the entire and sole ownership, the names of the respective owners shall be set forth, together with their respective interests therein. If this policy is made payable, in case of loss, to a third party, or held as collateral security, the proofs of loss shall be made by the party originally insured, unless there has been an actual sale of the property insured. All fraud, or attempt at fraud, by false swearing or otherwise, shall cause a forfeiture of all claim on this company under this policy.

But, provided, in case differences shall arise touching any loss or damage after proof thereof has been received in due form, the matter shall, at the written request of either party, be submitted to impartial arbitrators, whose award in writing shall be binding on the parties as to the amount of such loss or damage, but shall not decide the liability of the company under this policy; and, provided further, that it shall

be optional with the company to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time, giving notice of their intention so to do within thirty days after receipt of the proofs herein required; and in all cases, whether this company elect to rebuild or not, the assured shall, if required, furnish plans and specifications of the buildings destroyed.

The cash-value of property destroyed or damaged by fire shall in no case exceed what would be the cost to the assured, at the time of the fire, of replacing the same; and in case of the depreciation of such property, from use or otherwise, a suitable deduction from the cash cost of replacing shall be made, to ascertain the actual cash-value.

Where property insured by this company is damaged by removal from a building in which it is exposed to loss by fire, said damage shall be borne by the insured and the insurers, in such proportion as the whole sum insured bears to the whole value of the property insured, of which proof in due form shall be made by the claimant.

10. This insurance, the risk not being changed, may be continued for such further time as shall be agreed on, provided the premium therefor is paid and endorsed on this policy, or a receipt given for the same, and it shall be considered as continued under the original representation, and for the original amounts and divisions, unless otherwise specified in writing; but in case there shall have been any change in the risk, either within itself or by neighboring buildings, not made known to the company by the assured at the time of renewal, this policy and renewal shall be void.

11. It is a part of this contract that any person other than the assured, who may have procured this insurance to be taken by this company, shall be deemed to be the agent of the assured named in this policy and not of this company, under any circumstances whatever, or in any transaction relating to this insurance.

12. It is furthermore hereby expressly provided and mutually agreed, that no suit or action against this company, for the recovery of any claim by virtue of this policy, shall be sustainable in any court of law or chancery, unless such suit or action shall be commenced within twelve months next after the loss shall occur; and should any suit or action be commenced against this company after the expiration of the aforesaid twelve months, the lapse of time shall be taken and deemed as conclusive evidence against the validity of such claim, any statute of limitation to the contrary notwithstanding.

☞ GAS.—The generating or evaporating within the building, or contiguous thereto, of any substance for a burning-gas, or the use of gasoline for lighting, is prohibited under this policy, unless permitted in writing hereon.

☞ Fences and other yard-fixtures, also store furniture and fixtures, are not insured under the within policy, unless separately and specifically mentioned.

☞ Plate-glass doors and windows, when the plates are of the dimensions of nine square feet or more, are not covered by insurance on the building, but must be separately and specifically insured.

☞ Frescoed work, or gilding on walls or ceilings, is not covered by insurance on the building, but must be separately and specifically insured.

☞ BUILDERS' RISK.—The working of carpenters, roofers, tinsmiths, gas-fitters, plumbers, or other mechanics, in building, altering, or repairing the premises named in this policy, will vitiate the same, unless permission for such work be endorsed in writing hereon, except in dwell-

ing-houses only, where five days are allowed in any one year for incidental repairs, without notice or indorsement.

☞ And it is hereby understood and agreed, by and between this company and the assured, that this policy is made and accepted in reference to the foregoing terms and conditions, and to the classes of hazards and memoranda printed on the back of this policy, which are hereby declared to be a part of this contract, and are to be used and resorted to, in order to determine the rights and obligations of the parties hereto, in all cases not herein otherwise specially provided for in writing.

In witness whereof the Home Insurance Company have caused these presents to be signed by their president, and attested by their secretary, in the city of New York. But this policy shall not be valid unless countersigned by the duly-authorized agent of said Home Insurance Company at Springfield, Ill.

CHAS. J. MARTIN.
President.

J. H. WASHBURN,
Secretary.

Countersigned at Chicago this 17 day of Nov'r, 1871.
ARTHUR C. DUCAT, *Agent.*

Classes of hazards.

HAZARDOUS.

Bristles and hair cloth, (wholesale.)
Boots and shoes, (wholesale,) including India-rubber boots and shoes.
Carpets, (retail stocks of.)
Card printing, (by hand-power.)
Carriage trimmings.
Carriages and sleighs.
Clothing, (wholesale stocks of,) ready-made.
Coffee.
Cordage.
Cotton batts and wadding.
Cotton yarn.
Dry goods, foreign and domestic, exclusively in unbroken and unopened packages.
Dry goods, (wholesale stocks of.)
Drugs, dry, in packages, (importers' stocks of.)
Flax, in bales.
Fire-crackers, in packages.
Flocks.
Flour.
Fruits, (wholesale stocks of.)
Furs and peltries, in unbroken packages.
Furs, unpacked.
Grocers' stocks.
Grocers' stocks, (retail.)
Glass, window, in boxes.
Gum copal.
Gum shellac.
Gunny-cloth and gunny-bags.
Gutta-percha, unmanufactured.
Hardware, staple, in packages.
Hatters' furs, (stocks of.)
Hats and caps, (wholesale stocks of,) without manufacturing.
Hemp, in bales.
Hides and sole leather.
Hops, in bales.
India-rubber, unmanufactured.
Indigo.
Iron-ware, wholesale, (also stoves, tin-ware, and hollow-ware.)
Iron goods, ornamental, japanned, and bronzed, (stocks of.)
Leather, morocco, and findings.
Machinery, (stocks of) on sale.
Manilla grass, in bales.
Men's straw hats and caps, (stocks of.)
Nails, (stocks of.)
Oakum, in bales.
Oil, (fish and vegetable.)
Oil-cloths, (stocks of.)
Paints, ground in oil.
Paper in reams, and straw boards.
Paper hangings, (wholesale.)
Pins, (stocks of.)
Pot, pearl, and soda ashes.
Provisions.
Rice.
Saddlery and harness, (stocks of.)
Sail-making.
Salt.
Sewing-machines, (stocks of.)
Sisal-grass, in bales.
Spices.
Sugars.
Sulphur.
Tallow.
Teas.
Threshed grain.
Tobacco, plug and twist, in boxes or kegs, (wholesale.) [See extra-hazardous.]
Trunks, (stocks of.)
Whalebone.
Whiskey, in barrels, (stocks of.)
Wool.
Wines and liquors, in packages, (importers' stocks of.)

EXTRA-HAZARDOUS.

Artificial flowers.
Artists' materials.
Auction stores.
Agricultural implements, including seedmen's stocks.
Alcohol.
Apothecaries' stocks.
Asphaltum.
Bandboxes, (stocks of.)
Booksellers' stocks.
Boots and shoes, (retail.)
Brushes, (stocks of.)
Bag-making, (cloth,) by hand-power.
Bakeries, with ovens outside the building, and using coal only.
Basket-selling.
Billiard saloons and contents.
Blacksmith shops.
Boot and shoe manufacturing by hand-power only.
Bottling-cellars.
Brush-makers' stock.
Cabinet-ware, without manufacturing, repairing, upholstering, or varnishing.
Carving, by hand-power.
China, unpacked.
Clothing, ready-made, (retail stocks of,) also merchant tailors'.
Confectioners' stocks.
Corks, (stocks of.)
Car-springs, (gutta-percha or India-rubber.)
China, or earthen or glass ware, (wholesale and retail stocks of,) with privilege of packing or unpacking.
Copper-plate printing.
Coopers' shops, (strapping boxes only.)
Corset-making.
Daguerreotype and photographic stocks.
Daguerreotype and photographic establishments.
Dress trimmings, (stocks of.)
Dry goods, (retail stocks of.)
Earthen-ware, (unpacked.)
Eating-houses.
Electroplating.
Essential oils.
Fancy goods, (wholesale and retail stocks of.)
Feathers, (stocks of.)
Fishing-tackle.
Fringes, (stocks of.)
Fringe-making, by hand-power.
Fruits, (retail stocks of.)
Furriers' and hatters' stocks, unpacked.
Furs, cutting and sewing, without fire-heat.
Gas-fitting.
Gas-fixtures.
Gentlemen's furnishing goods, (wholesale and retail stocks of.)
Gimps, (stocks of.)
Glass, window or plate, unpacked.
Glass-ware, unpacked; looking-glasses, unpacked.
Gilding.
Gun-repairing.
Gutta-percha goods, except boots and shoes.
Hardware and cutlery.
Hats and caps, (retail,) without manufacturing.
Hat (straw, grass, or chip) bleaching.
Hay and straw, pressed in bundles.
Hoop-skirts and hoop-skirt materials, (stocks of.)
Hoop-skirt manufacturing by hand, without fire-heat.
House-furnishing goods, (retail stocks of.)
India-rubber goods, (stocks of,) except boots and shoes.
Iron, (hoop, sheet, and rod.)
Jewelers' and watchmakers' stocks.
Kid gloves, (stocks of.)
Ladies' and children's furnishing goods, (stocks of.)
Laces and embroideries, (wholesale.)
Lamp-sellers' stocks, without camphene, burning-fluid, spirit-gas, or kerosene.
Lager-bier saloons.
Lime, unslacked, (stocks of.)
Liquors, in glass, unpacked.
Lithographers.
Looking-glasses, (stocks of,) with privilege of packing or unpacking.
Map mounting and varnishing.
Matches on sale, (stocks of.)
Metals, in bars, pig, and tin plates.
Military goods, (stocks of.)
Millinery goods, (wholesale and retail stocks of.)
Needles, (stocks of.)
Optical and mathematical instrument-makers' stocks.
Painters' stocks.
Paper hangings, (retail stocks.)
Paper collars.
Paper boxes, (stocks of.)
Pawnbrokers' stocks.
Perfumers' stocks.
Precious stones.
Percussion caps.
Piano-fortes in warerooms.
Picture-frame joining.
Pitch.
Plumbing and pewtering.
Pocket-book makers' stock.
Pocket-book making, (without use of fire-heat.)
Porter-houses, bar-rooms, sample-rooms, and retail liquor-stores.
Rags, in bales.
Rectifying liquors by cold process only.
Refectories.
Restaurants.
Resin.
Saddlery and harness manufacturing.
Sheet-iron and copper ware, (retail.)
Shirt manufactories, (without ironing.)
Ship chandlery.
Silversmiths' stocks.
Silver and plated ware.
Spirits of turpentine.
Stationers' stocks.
Stoves, (retail stocks of.)
Straw goods, (wholesale and retail stocks of.)

Tar.
Tailors' trimmings, (stocks of.)
Tin and hollow ware, (retail.)
Tin or sheet-iron or copper working.
Tobacco, leaf and cut, cigars and snuff, (wholesale and retail.)
Tow, in bales.
Turpentine.
Umbrellas and parasols, (wholesale and retail,) with privilege to put together and finish by hand only.
Upholsterers' stocks.
Watchmakers' tools.
Watches, in packages, as imported.
Wine, in glass, unpacked.
Worsteds and fancy wools, (importers' stocks of.)
Yankee notions.

SPECIALLY HAZARDOUS.

Acids, (nitric, sulphuric, muriatic, and other acids causing ignition.)
Band-box and paper-box making.
Bakeries, ovens within the building, or using wood or shavings.
Bark-mills.
Bellows-making.
Bleaching works.
Blind-makers' shops.
Blacksmithing.
Block and pump making.
Boat-builders' shops.
Book-binderies.
Boot and shoe manufactories, with fire-heat.
Box-repairing.
Brass foundries.
Breweries.
Brick-yards, with kilns.
Brimstone works.
Brush manufactories.
Burning fluid.
Cabinet-makers' shops.
Cabinet ware, (stocks of,) with privilege to varnish and upholster.
Candle manufactories.
Camphene, on sale.
Cap manufactories.
Carpenters' shops.
Chair-makers' shops.
Chemical laboratories.
Coach-makers' shops.
Coffee and spice mills.
Comb manufactories.
Confectionery manufactories.
Coopers' shops.
Coppersmiths' shops, with forges.
Corn-kilns.
Cotton-mills.
Cotton-presses.
Cotton, in bales.
Cotton, unpacked.
Distilleries and rectifying establishments.
Drug-stores, with privilege of compounding.
Druggists' stock, (wholesale.)
Drug and spice mills.
Dyeing establishments.
Ether.
Fire-works.
Fire-work manufactories.
Flax-mills.
Flax, unpacked.
Floor-cloth manufactories.
Fringe manufactories.
Fulling-mills.
Fur-dressing establishments.
Gas-fixtures manufactories.
Gas manufactories.
Glass manufactories.
Gold-pen making.
Grate manufactories.
Grist or flouring mills.
Gun manufactories.
Gunpowder.
Hat manufactories.
Hay, unpacked.
Hay-presses.
Hemp manufactories.
Hoop-skirt manufactories, by machinery or fire-heat.
Hemp, unpacked.
Hotels.
Houses, building or repairing.
Ink manufactories.
India-rubber and gutta-percha manufactories.
Iron foundries.
Ivory-black and lamp-black manufactories.
Japanning.
Jewelry manufactories.
Jewelry-case making.
Junk shops.
Lamp manufactories.
Lampsellers' stocks, (with privilege of keeping camphene or kerosene.)
Laundries.
Lime yards and sheds.
Lime, unslacked.
Livery-stables.
Looking-glass and picture-frame manufactories.
Lumber-yards.
Machine-shops.
Manilla grass, unpacked.
Mahogany-yards.
Malt-houses.
Match manufactories.
Metal mills.
Musical-instrument manufactories.
Musical instruments, (stocks of.)
Mungo.
Nitrate of soda.
Oiled-clothing manufactories.
Oiled clothing, (stocks of.)
Oil mills and manufactories.
Oils, resin, and similar.
Oil refineries.
Omnibus stables.
Packing buildings and yards.
Paper-bag manufactories.
Paper-hanging manufactories.
Paper-mills.
Percussion-cap manufactories.
Perfumery manufactories.
Phosphorus.
Pictures and prints.

Planing, or grooving, or moulding mills.
Plating.
Plated-ware manufacturing.
Pocket-book making.
Pork-houses.
Powder mills.
Printed music.
Printing of books, and job printing.
Print works.
Provisions in process of being smoked.
Rag stores.
Rags and paper stock.
Rolling-mills.
Rope and cordage manufactories.
Safe (iron) manufactories.
Saltpetre.
Sash-makers' shops.
Saw-mills.
Segar manufactories.
Ship building or repairing.
Shoddy.
Silversmiths' manufactories.
Smoke-houses.
Snuff-mills.
Soap manufactories.
Spirit-gas manufactories, and spirit-gas on sale.
Stave-yards.
Steamboats.
Steam-boilers in use.
Steam-engines in use.
Stove manufactories.
Sugar refineries.
Tallow-melting establishments.
Tanneries.
Tar-boiling establishments.
Taverns.
Theatres & other places of public exhibit'n.
Timber-yards.
Tobacco manufactories.
Tow, unpacked.
Toys, (shop-keepers' stocks of.)
Trunk-making.
Turpentine distilleries.
Type and stereotype foundries.
Umbrella manufactories.
Upholstery manufactories.
Varnish manufactories.
Wheelwrights' shops.
Window-shade painting.
Wood and willow ware, (stocks of.)
Woolen-mills.
Wool-waste.

And generally all workshops, mills, and manufacturing establishments, and all trades and occupations requiring the use of fire-heat not above enumerated as hazardous or extra-hazardous.

The Home Insurance Company hereby consent that the interest of , in the within policy, subject to all the terms and conditions therein mentioned and referred to, be assigned to , 187

Agent.

For value received, hereby transfer, assign, and set over unto and asssigns all , title, and interest in this policy, and all advantage to be derived therefrom.

Witness hand and seal this day of , 187 .

Sealed and delivered in presence of—

[L. S.]

[Stamp.]

The Home Insurance Company hereby consent that the interest of , in the within policy, subject to all the terms and conditions therein mentioned and referred to, be assigned to 187

Agent.

For value received, hereby transfer, asssign, and set over unto and assigns all , title, and interest in this policy, and all advantage to be derived therefrom.

Witness hand and seal this day of , 187 .

Sealed and delivered in presence of—

[L. S.]

[Stamp.]

DIRECTORS.

George C. Collins, firm of George C. Collins & Co.
Danford N. Barney, president Wells, Fargo & Co.'s Express.
Lucius Hopkins, firm of Hopkins, Dwight & Trowbridge.
Thomas Messenger, president Brooklyn Bank.

William H. Mellen, late firm of Claflin, Mellen & Co.
Homer Morgan, 2 Pine street.
Levi P. Stone, late firm of Stone, Starr & Co,
Ward A. Work, firm of Ward A. Work, Pennell & Foster.
Isaac H. Frothingham, pres't Union Trust Co.
Chas. A. Bulkley, late firm of Bulkley & Co.
George D. Morgan, late firm of E. D. Morgan & Co.
Oliver E. Wood, " " O. E. Wood & Co.
Alfred S. Barnes, firm of A. S. Barnes & Co.
Levi P. Morton, " Morton, Bliss & Co.
Curtis Noble, late firm of Noble & Douglass.
John B. Hutchinson, firm of J. C. Howe & Co., Boston.
Charles P. Baldwin, " Anderson, Starr & Co.
Amos T. Dwight, " Hopkins, Dwight & Trowbridge.
Henry A. Hurlbut, late firm of Swift, Hurlbut & Co.
Jesse Hoyt, firm of Jesse Hoyt & Co.
William Sturgis, late firm of Sturgis, Shaw & Co.
Charles J. Martin, president.
John R. Ford, president State Bank of New Brunswick.
George T. Stedman, firm of Stedman, Barbour & Herod, Cin.
A. F. Willmarth, vice-president.
F. H. Cossitt, 37 Pine street.
Wm. R. Fosdick, late firm of Wm. R. & Chas. B. Fosdick.
Lewis Roberts, firm of L. Roberts & Co.
Wm. H. Townsend, late firm of Henrys, Smith & Townsend.
P. C. Van Schaick, " " Van Schaick & Edwards.
Thos. T. Buckley, firm of Buckley, Welling & Co.
Oliver S. Carter, " Carter, Hawley & Co.
Henry M. Taber, " C. C. & H. M. Taber.
George W. Parsons, " Barney, Butler & Parsons.
Benjamin Tomes, " Tomes, Melvain & Co.
Edw'd A. Quintard, " Quintard, Ward & Co.
Wm. C. Fowler, " Fowler, Crampton & Co.
D. A. Heald, 2d vice-president.
Reune Martin, Hartford Carpet Co.
Henry R. Pierson, gen't sup'l N. Y. C. & H. R. R. R. Co.
John Bigelow, late minister to France.
Thomas P. Eldridge, firm of Eldridge, Dunham & Co.
Oliver Hoyt, " Hoyt Brothers.
Joseph Seligman, " J. & W. Seligman & Co.
A. C. Richards, " Fabbri & Chauncey.

THE HOME INSURANCE COMPANY OF THE CITY OF NEW YORK.

Cash capital, $2,500,000.

J. H. WASHBURN, *Secretary.*
GEORGE M. LYON, *Assis't Secretary.*
T. B. GREENE, *2d Assis't Secretary.*
CHARLES J. MARTIN, *President*
A. F. WILLMARTH, *Vice-President.*
D. A. HEALD, *2d Vice-President.*

☞ If this policy is cancelled the following receipt is to be filled up and signed by the assured :

, 187 .

In consideration of dollars, return premium, the receipt of which is hereby acknowledged, this policy is cancelled and surrendered to the Home Insurance Company.

Assured.

(Indorsed:) No. 22639. Home Insurance Company. Office, No. 135 Broadway, New York. Cash capital, $2,500,000. Paddock & Ide. $800. Premium, $6; policy and survey, $. This policy expires November 17, 1872. ☞ Please read this policy carefully, to prevent misunderstanding in case of loss. Ed. May, 1869. Revised Oct., 1871.

168 *Receipt of Home Ins. Co. on steam-flour-mill and machinery.*

HOME INSURANCE COMPANY,
OFFICE NO. 135 BROADWAY, N. Y.,
No. 9. *Bunker Hill (Ill.) Agency, Feby.* 14, 1871.

Received from E. A. Pooley one hundred and seventy-five dollars, being the premium on thirty-five hundred dollars insured under policy No. 71, which is hereby continued in force for one year, to wit, from the 14th day of February, 1871, until the 14th day of February, 1872, at noon.

But this renewal shall not be valid unless countersigned by the duly-authorized agent of the said Home Insurance Company at Bunker Hill, Ill.

CHAS. J. MARTIN, *Prest.*
JOHN McGEE, *Secry.*
JAMES A. BEACH, *Agent.*

[50 U. S. inter. rev. Entry of goods, fifty cents, 50.]

169 No. 2249. $3,000.00

PHŒNIX INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

By this policy of insurance the Phœnix Insurance Company, in consideration of one hundred and fifty dollars, to them in hand paid by the assured hereinafter named, the receipt whereof is hereby acknowledged, do insure Mr. E. A. Cooley against loss or damage by fire, to the amount of three thousand dollars, as follows:

$500.00 on his frame steam flouring-mill, situated in the town of Staunton, Macoupin Co., Illinois, on the southeast quarter of the northeast quarter of the northeast quarter of section No. 31, town. 7, range 6, and known as the Staunton mills.

$1,500.00 on machinery contained in same.

$1,000.00 on engine & boiler contained in same, entirely detached.

Reference had to application No. 2249, hereby made a part of this policy.

Other insurance, $3,500 in Home, New York. In case of loss under this policy, $3,000 to be paid to Mess. Sparks & Best, mortgagees, as their interest may appear. And said company hereby agrees to make good unto the said assured, his executors, administrators, and assigns, all such immediate loss or damage, not exceeding in amount the sum insured, as shall happen by fire to the property above specified, from the fourteenth day of February, one thousand eight hundred and seventy, at noon, to the fourteenth day of February, one thousand eight hundred and seventy-one, at noon; the amount of loss or damage to be esti-

mated according to the actual cash-value of the property at the time of the loss, and to be paid sixty days after due notice and proofs of the same, made by the assured, and received at this office in accordance with the terms of this policy hereinafter mentioned:

1. This insurance may be continued for such further time as shall be agreed on, provided the premium therefor is paid and indorsed on this policy, or a receipt given for the same, and it shall be considered as continued under the original representation; but in case there shall have been any change in the risk, either within itself or by adjacent buildings, not made known to the company by the assured at the time of renewal, this policy shall be void.

2. In case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the assured shall be entitled to recover of this company no greater proportion of the loss sustained than the sum hereby insured bears to the whole amount insured thereon, whether such other insurance be by specific or by general or floating policies. Re-insurance for any other insurance company to be on the basis of joint liability with said company, and in the event of loss this company to pay its proportion of said loss sustained by said company under their policy.

3. This policy may be cancelled at any time by the company on giving written or verbal notice to that effect and refunding or tendering a ratable proportion of the premium for the unexpired term.

4. If an application, survey, plan, or description of the property herein insured is referred to in this policy, such application, survey, plan, or description shall be considered a part of this contract, and a warranty by the assured; and any false representation by the assured of the condition, situation, or occupany of the property, or any omission to make known every fact material to the risk, or an overvaluation, or any misrepresentation whatever, either in a written application or otherwise; or if the premium shall be unpaid; or if the assured shall have, or shall hereafter make any other insurance on the property hereby insured, or any part thereof, without the consent of the company written hereon; or if the above-mentioned premises shall be occupied or used so as to increase the risk, or become vacant and unoccupied for a period of more than thirty days, or the risk be increased by any means whatever within the control of the assured, without the assent of this company indorsed hereon; or if the property be sold or transferred, or any change take place in title or possession, whether by legal process, judicial decree, voluntary transfer, or conveyance; or if this policy shall be assigned either before or after a loss without the consent of the company indorsed hereon; or if the assured is not the unconditional and sole owner of the property; or if the interest of the assured in the property, whether as owner, trustee, consignee, factor, mortgagee, lessee, or otherwise, is not truly stated in this policy; or if gunpowder, phosphorus, saltpetre, nap'tha, benzine, benzine-varnish, benzole, petroleum, or crude earth-oils are kept on the premises; or if camphene, burning-fluid, refined coal or earth oils are kept for sale, stored, or used on the premises in quantities exceeding one barrel at any one time without written permission in or endorsed upon this policy; then, and in every such case, this policy shall be void.

5. This company shall not be liable for loss by theft at or after a fire, nor for any loss or damage by fire caused by means of or during an invasion, insurrection, riot, civil commotion, or military or usurped power; nor for the loss of bills, notes, accounts, deeds, evidences of debt, or securities of property of any kind; money, bullion, jewels, plate,

watches, musical or scientific instruments, ornaments, medals, patterns, printed music, engravings, paintings, picture frames, sculpture, casts, models, or curiosities, unless particularly specified in the policy; nor in consequence of any neglect or deviation from the laws or regulations of police where such exist; nor for damage caused by lightning, or any explosion unless fire ensues, and then for the loss or damage by fire only. If the property shall be removed from a building when there is no loss by fire, the damage shall be borne by both parties in such proportions as the whole sum insured bears to the whole value of the property insured.

6. In case of loss, the assured shall use their best endeavors in saving and protecting the property from damage at and after the fire; if they shall fail so to do, this company will not be liable for damage caused by such failure, and there can be no abandonment to the company of the property insured. The assured shall forthwith give notice of loss to the company, and as soon after as possible render a particular account of such loss, signed and sworn to by them, stating whether any and what other insurance has been made on the same property, giving copies of the written portion of all policies thereon, the actual cash value of the property, their interest therein, for what purpose and by whom the building insured or containing the property insured and the several parts thereof were used, when and how the fire originated, and shall also produce a certificate, under the hand and seal of a magistrate, notary public, or commissioner of deeds, (nearest to the place of fire, not concerned in the loss as a creditor or otherwise, nor related to the assured,) stating that he has examined the circumstances attending the loss, knows the character and circumstances of the assured, and verily believes that the assured has, without fraud, sustained loss on the property insured to the amount which such magistrate, notary public, or commissioner of deeds shall certify. And the assured shall, if required, submit to an examination under oath by any person appointed by the company, and, if deemed necessary by the company, to a second examination, and subscribe to such examinations when reduced to writing; and shall also produce their books of account and other vouchers, and all property hereby insured, whether damaged or not damaged, and shall also produce certified copies of all bills and invoices where the originals have been lost, and exhibit the same for examination to any person named by the company. Damage to property not totally destroyed (unless the amount of said damage is agreed upon between the insured and the company) shall be appraised by disinterested men, mutually chosen by the assured and the company, and the company reserves the right to take the articles damaged at their appraised value. When personal property is damaged, the assured shall forthwith cause it to be put in the best order possible, properly arranged, and make an inventory thereof, naming the quantity and cost of each article, and upon each article the damage shall be separately appraised; and the detailed report of the appraisers, in writing, shall form a part of the proofs hereby required, one-half the appraisers' fees to be paid by the company. In case of loss on property held in trust or on commission, or if the interest of the assured be other than the entire and sole ownership, the names of the respective owners shall be set forth with their respective interests therein, certified to by them. If this policy is made payable in case of loss to a third party or held as collateral security, the proofs of loss shall be made by party insured. And until such proofs, declarations, and certificates are produced and examinations and appraisals permitted, the loss shall not be payable. All fraud or at-

tempt at fraud, or false swearing on the part of the assured, shall cause a forfeiture of all claim under this policy.

7. In case differences shall arise touching any loss or damage, after proof thereof has been received in due form, the matter shall, at the written request of either party, be submitted to arbitrators mutually chosen, whose award in writing shall be binding on the parties as to the amount of such loss or damage, but shall not decide the liability of the company under this policy; and provided further, that it shall be optional with the company to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time, giving notice of their intention so to do within thirty days after receipt of proofs herein required; and in case this company elect to rebuilt, the assured shall, if required, furnish plan and specifications of the building destroyed.

8. It is furthermore hereby expressly provided, and mutually agreed, that no suit or action against this company, for the recovery of any claim by virtue of this policy, shall be sustainable in any court of law or chancery, unless such suit or action shall be commenced within twelve months next after the loss shall occur; and should any suit or action be commenced against this company, after the expiration of the aforesaid twelve months, the lapse of time shall be taken and deemed as conclusive evidence against the validity of such claim, any statute of limitation to the contrary notwithstanding.

This policy shall not be valid until countersigned by the duly-authorized agents of the company at Springfield, Ills.

In witness whereof the said Phœnix Insurance Company have caused these presents to be signed by their president and attested by their secretary, in the city of Hartford, State of Connecticut.

C. H. KELLOGG, *President.*

WM. B. CLARK, *Secretary.*

Countersigned at Bunker Hill this 28 day of Feb'y, 1870.

JAMES A. BEACH, *Agent.*

This policy is not assignable for purposes of collateral security, but in all such cases it is to be made "payable in case of loss," etc., by endorsement on its face. In case of actual sale and transfer of title, leave having been previously obtained, the form subjoined may be used, which must be executed at the time of said transfer:

The property hereby insured having been purchased by , the Phœnix Insurance Company consent that the interest of in the within policy may be assigned to said purchaser, subject, nevertheless, to all the terms and conditions therein mentioned and referred to.

Dated at this day of , 186 .

, *Agent.*

For value received, hereby transfer, assign, and set over unto Best & Sparks, and the assigns, all the right, title, and interest in this policy of insurance, and all benefit and advantage to be derived therefrom.

Witness my hand and seal this fifteenth day of March, 1870.

Sealed and delivered in presence of—

PHŒNIX INSURANCE COMPANY OF HARTFORD, CT., AGENCY AT BUNKER HILL, ILLS.

No. 25.

Received of E. A. Cooley one hundred and fifty $\frac{}{100}$ dollars, being the premium on three thousand dollars, insured under policy No. 2249, which is hereby continued in force for one year, to wit, from the 14th day of February, 1871, until the 14 day of February, 1872, at noon.

C. H. KELLOGG, *President.*

WM. B. CLARK, *Secretary.*

Countersigned at Bunker Hill this 14 day of February, 1871.

JAMES A. BEACH, *Agent.*

[U. S. 50-ct. inter. rev., ow'r of goods.]

170 United States circuit court, southern district of Illinois.

JAMES B. EAMES & E. A. COOLEY
vs.
THE HOME INSURANCE CO., OF NEW YORK. } Bill in chancery.

In this cause it is agreed that the depositions of H. S. Durand, A. C. Ducot, and Geo. F. Bissell & James A. Beach, may be taken at the office of Paddock & Ide, No. 108 Dearborn st., Chicago, before any notary public of Cook County, on the 13th day of February, 1874, at the hour of two o'clock p. m. of that day, upon oral interrogatories to be read on behalf of said defendant, said complainants to have the right of cross-examination at such time & place, either orally or by written cross-interrogatories, as they or their counsel may elect; and in order to save delay it is also agreed that said defendants may amend their said answer before the hearing, and that so soon as said depositions can be taken as aforesaid said defendants will appear at said court at Springfield, and join with said complainants in an application to said court to set down said cause for hearing whenever notified so to do by said complainant's counsel.

B. F. BURNETT,
Sol. for Compts.
PADDOCK & IDE,
Sol. for Defts.

Feb. 7th, 1874.

171 *Deposition of A. C. Ducot.*

Deposition of Arthur C. Ducot, a witness, produced, sworn, and examined in accordance with the amended agreement to be read as evidence on behalf of the defendants in the cause therein mentioned, pending in the United States circuit court for the southern district of Illinois, before me, J. Henry Truman, a notary public of Cook County and State of Illinois.

The said ARTHUR C. DUCOT, being first duly sworn, on his oath deposes and says:

Int. 1. What is your name, age, residence, and occupation?

Ans. Arthur C. Ducot; age, 44; Evanston, Illinois; occupation, fire-insurance agent and manager for Home Ins. Co., of N. Y.

Int. 2. Were you such in October, 1872?

Ans. I was general agent at that time. There has been since a change in title but not in duties.

Int. 3. Do you know the plff. Eames & Cooley?

Ans. I do not, personally.

Int. 4. Do you of an application in controversy in this suit forwarded by Jas. A. Beach, agent for your company at Bunker Hill?

Ans. I remember such a paper; we are receiving such constantly.

172 Int. 5. Look at the paper now shown you marked "Exhibit F. R. McW." & state if that is the application referred to by you.

Ans. I believe it is.

Int. 6. Have you ever had any communication on the subject of the risk mentioned in said application or the risk in controversy in this suit with the plaintiffs direct?

Ans. Not that I remember of.

Int. 7. Have you seen the printed copies of the correspondence in this case, some of which comprises letters from yourself?

Ans. I have.

Int. 8. Do the originals of these letters embrace all that you have ever done or said with reference to this application up to the time of the fire?

Ans. I believe they do. I know of nothing else than what is embraced in this printed paper that has been submitted to me by Mr. Paddock.

Int. 9. Referring to your letter of Chicago, Oct. 14, 1872, to James A. Beach, agent, please explain this expression: "If they wish a home policy at that rate, let us know and we will send you ticket." What was a ticket?

Ans. A ticket means a promise to issue a policy under the direction contained in such ticket.

173 Int. 10. Did you always use tickets? If not, explain on which class of risks they were used.

Ans. We used tickets only upon such risks as it is necessary under the instructions to agents to submit to us before issuing a policy, under which class the risk in question comes.

Int. 11. Look at the paper now shown you and marked Exhibit 2—J. H. T., N. P., and state what it is.

Ans. This is the blank for a ticket or permit referred to as given in case of special risks.

Int. 12. Was it the form of ticket referred to by you in your letter to Beach?

Ans. It is the same form there referred to in my letter of Oct. 14, 1872.

Int. 13. Had your agents at the time in controversy any instruction bearing upon the subject of special risks of the class in question, and can you produce and mark as an exhibit a copy of such instructions?

Ans. Yes, sir, they had instructions on the subject of special risks, (which means specially hazardous risks,) in which class flouring-mills are prominent.

174 I see in the paper before me, under paragraph 5, the same instructions issued to Beach, agent at Bunker Hill.

Int. 14. Will you hand those to the officer to mark as "Exhibit 3?"

Ans. Yes, sir; paragraph 5.

Int. 15. Look at the paper now shown you, and state whether or not, with the exception of its written parts, it is such a form of policy as was in use by your company at the time in question, Oct., 1872; and, if so, please hand it to the officer to be marked "Exhibit 4."

Ans. The printed form is the same. There is a permit to remove pasted on the policy that does not belong to the form.

Int. 16. Is that such a policy as would have been issued to plaintiff in case any had issued upon their application?

Ans. It is, except the written portion, which would have been dictated in the permit-ticket, before referred to.

Int. 17. What data had you or the company, aside from the documents already in evidence in this case, for the form or framing of these written portions.

Ans. Nothing, except we are in the habit of limiting other insurance by our own opinions of value.

175 Int. 18. What information had you or the company, aside from the application, as to the nature of plaintiff's ownership in this property; the nature of the encumbrances, and the amount of encumbrance?

Ans. None that I know of.

Int. 19. What information had you as to the time during which this insurance was applied for (meaning the duration of the risk?)

Ans. None, other than is contained in the application.

Int. 20. Does that specify any such term?

Ans. No.

Int. 21. At what stage in the proceedings would the question arise of fixing the duration of the risk or the time for which the policy was to be written?

Ans. On the final closing of the contract. At which time the assured usually designate the time at which he desires the risk to begin and end, unless otherwise set forth in the application, a consummation of the contract in this case, and under the agent's commission and instructions would be the issuance of a policy.

Int. 22. Then, I understand you that the naming of a rate on the application does not of itself fix the question of duration of the risk?

176 Please explain as to this.

Ans. Certainly it does not. We have merchants constantly asking our rates on their risks, and explaining their risks to us, as one prices merchandise in a store, who never consummate a contract and who we believe are seeing where they can do best.

Int. 23. Did you or your company, to your knowledge, ever receive any premium on the insurance claimed in this suit?

Ans. No.

Int. 24. Did you or your company ever waive any of the conditions or terms of the ticket or policy, so far as you know, in favor of the complainants in this case, or, so far as you know, was any policy ever delivered to complainants or any ticket ever sent to Beach?

Ans. No.

Int. 25. Does the article on special hazards, in the instructions referred to by you, comprise the entire authority of the agent Beach?

Ans. Yes.

Cross-examination by Mr. Burnett, sol. for complainants:

Cr. int. 1. To what letter of yours, if any, was Beach's letter

177 of Oct. 28, 1872, an answer or response? (No. 8, Exhibit P.)

Ans. I cannot tell. I do not know.

Cr. int. 2. To what was your letter of Oct. 18, 1872, an answer or response? (No. 5, Exhibit C.)

Ans. I presume it was to the endorsement of Beach on my letter returned to me by Beach. The letter on which endorsement appeared

was dated Oct. 14, No. 2 in the exhibit, and the endorsement is No. 3 in the exhibit.

3. On receipt of Beach's letter of Oct. 8, No. 8, Exhibit C, would you have sent permit to issue policy, had you not learned at the time of the burning of the mill?

Ans. I am not positive that I would. I sometimes sign permits and change my mind before they are mailed, when I get to thinking of it at my leisure. These negotiations had not improved my opinion of this hazard.

Cr. int. 4. In your letter of Oct. 29, 1872, No. 10, Exhibit C, you say, if we had not demanded the additional ½ per cent., we should have had four thousand dollars to pay; please explain how or in what manner your company would have incurred this responsibility.

178 Ans. The application is dated the 12th of Oct. On the 14th of Oct. we asked six and a half per cent. Beach asked us at Bunker Hill, by an endorsement of Oct. 18, in one of our letters, if we would carry at six per cent. On Oct. the 18th, we wrote to Beach, "We cannot go under six and a half." On Oct. 28th, Beach writes, "Send me a ticket for four thousand." And, on the 29th, he instructs us not to return ticket, "for the mill is burned." Now, my reply to the question is this, that if we had not asked the half per cent. additional, which we thought the risk worth, the contract might possibly have been consummated, and policy issued before the burning of the mill.

C. int. 5. Had you concluded to take up with the six per cent., as suggested by Beach in his letter or endorsement No. 3, of the 14th of Oct., 1872, would you have sent him a permit to issuee a policy?

Ans. I never entertained the proposition.

C. int. 6. Had you sent permit to issue policy on application No. 105, marked as an exhibit, what would have been the date of the policy in reference to the date and reception of the application?

Ans. That depended entirely upon the consummation of the contract.

ARTHUR C. DUCOT.

179 *Deposition of Geo. F. Bissell.*

Deposition of Geo. F. Bissell, a witness produced, sworn, and examined in accordance with the agreement hereto prefixed, to be read as evidence on behalf of the defendants in the cause therein mentioned, pending in the United States court for the southern district of Illinois, before me, J. Henry Truman, a notary public of Cook County, in the State of Illinois.

The said GEORGE F. BISSELL, being first duly sworn, in response to the several interrogatories by counsel for defts. and complainants propounded, deposes and says:

Int. 5. What is your name, age, residence, and present occupation?

Ans. Geo. F. Bissell; age, 46; occupation, manager of Hartford Fire-Ins. Company; residence, Chicago.

Int. 2. Look at the paper now shown you, marked "Exhibit B. R. McW." referring to the figure in the first page under the head of rate 6½, and state whether any portion of those figures are in your handwriting.

Ans. They are not in my handwriting.

180 Int. 3. Do you know or have you any opinion as to the handwriting or as to the time when the fraction "½" was there written? If yea, state upon what facts it is based.

Ans. I do not know in whose handwriting the figures are, or when they were made, and I have no definite opinion.

Int. 4. State your recollection as to whether those marks "6½" were on the paper when first received at your office.

Ans. I have no definite recollection on that subject.

Int. 5. Was it your custom to make or direct any changes or alteration of figures upon applications after they came to your office?

Ans. It was not my custom to make such changes, and it was a standing instruction in the office of which I was manager not to make such changes.

Cross-examination by Mr. Burnett, sol. for complainants:

C. int. 1. Look on the application, opposite the printed word "approved" and state in whose handwriting the words "Oct. 18th" are and when the same were made.

Ans. The handwriting is that of my first assistant, P. P. Hay-
181 wood, and the date, as I believe, represents the day on which the application was examined in my office in Chicago.

C. int. 2. State what the line in writing immediately under the last referred to is, what it reads, and by whom written.

Ans. The first word in that line is "letter," then two dots under the word Octo., also under the figures 28; then follows the word "mortgage," &c. The meaning of the sentence together is, "Letter, Oct. 28, mortgage," &c., referring to the encumbrance on the property described in the application and a letter that day written in respect to it. It is in the same handwriting as the date above, namely, P. P. Haywood's.

Re-examination by Mr. Paddock, for defts.:

1. At the time of the endorsements in question, had you or your company, so far as you know, any information as to the risk aside from what was contained in the application?

Ans. None that I know of.

GEORGE F. BISSELL.

I, J. Henry Truman, a notary public in and for the county of
182 Cook, in the State of Illinois, do hereby certify that previous to the commencement of the examination of the said Arthur C. Ducot and Geo. F. Bissell as witness' in the suit between the said James B. Eames and E. A. Cooley, plaintiffs, and the said Home Insurance Company, of New York, defendant, they were duly sworn by me, as commissioner, to testify the truth in relation to the matters in controversy between the said plaintiffs and the said defendant, so far as they should be respectively *be* interrogated concerning the same; that the said depositions were taken at the office of Paddock & Ide, No. 108 Dearborn street, in the city of Chicago, in the county of Cook, and State of Illinois, on the 13th day of February, A. D. 1874, and that after said depositions were taken by me as aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witnesses respectively; and that thereupon the same were respectively signed and sworn to by the said deponants before me, the oath being administered by me as such commissioner at the place and on the day and year last aforesaid.

[L. S.]

J. HENRY TRUMAN,
Commissioner & Notary Public.

(Endorsed:) Filed Feb'y 25th, 1874. J. A. Jones, clerk.

183 United States of America, southern district of Illinois, in circuit court thereof. In chancery.

JAMES B. EAMES AND EDWIN A. COOLEY, partners, &c.,
vs.
THE HOME INSURANCE COMPANY OF NEW York.

The said complainants and B. F. Burnett, esq., their solicitor, will take notice that on Thursday, April 23d, at (11) eleven o'clock in the forenoon, at the office of Paddock & Ide, No. 110 Dearborn street, Chicago, the said defendants will proceed, before J. H. Truman, esq., a notary public of Cook County, Illinois, or some other notary of said county or other officer duly authorized to take the depositions of James A. Beach, Arthur C. Ducat, Henry S. Durand, George F. Bissell, P. P. Haywood, and others, witnesses for said defendants, to be read in evidence in said cause on the part of said defendant, when & where said complainants may appear, if they see fit, and cross-examine.

Chicago, Apl. 13, 1874.

PADDOCK & IDE,
Sols. for Defts.

184 Rec'd a true copy of the above notice this 15th day of April, 1874.

B. F. BURNETT,
Solr. for Complts.

Deposition of James A. Beach.

The deposition of James A. Beach, of Bunker Hill, in Macoupin County, State of Illinois, a witness of lawful age, produced, sworn, and examined upon his oath, on Thursday, April 23d, commencing at eleven o'clock, A. D. 1874, at the office of Paddock & Ide, No. 110 Dearborn street, in the city of Chicago, county of Cook, and State of Illinois, by me, J. Henry Truman, a notary public in and for said county of Cook, and named in the annexed notice, as a witness in a certain suit now pending in the circuit court of the United States for the southern district of Illinois, wherein James B. Eames and Edwin A. Cooley are complainants, and the Home Insurance Company of New York is defendant, on behalf of the defendant, upon interrogatories and cross-interrogatories propounded orally by the respective counsel for said defendants and complainants.

The said JAMES A. BEACH, being first duly sworn by me, as a witness in the said cause, before the commencement of his examina-
185 tion, to testify the truth as well on the part of the complainants as the defendants in relation to the matters in controversy between the said parties, so far as he should be interrogated, testified as follows in answer to interrogatories propounded to him by George L. Paddock, esq., counsel for defendant, and to cross-interrogatories by B. F. Burnett, esq., counsel for complainants:

Direct examination by counsel for defendant:

Int. 1st. What is your name, and where do you reside?

Answer. My name is James A. Beach; I reside at Bunker Hill, Macoupin County, Illinois.

(Objection to the testimony of the witness made by counsel for complainants, on the ground that the witness does not reside in this district, and does reside in the district where the suit is pending.)

Int. 2. Are you the James A. Beach whose deposition has been taken at Litchfield by the complainants in this cause?

Answer. I am.

Int. 3. Did you forward to the Chicago agency of the Home Ins. Co. the application No. 105, signed by complainants, dated October 12, 1872, in controversy in this suit?

Answer. I did.

186 Int. 4. This paper now shown you and marked "Exhibit F., R. M. W.," is the one referred to in your last answer, is it not?

Ans. It is the one.

Int. 5. Look at the answers Nos. 18 and 19 on this application, under the head of "ownership and encumbrance," and state in whose handwriting they are.

Answer. They are in my handwriting.

Int. 6. State how you obtained the information embraced in the answer in question.

Answer. By questioning the complainant.

Int. 7. What questions did you put to him?

Ans. I asked him the two questions under the head of No. 18, and also asked Mr. Eames if the incumbrance was the same as under a previous application.

Int. 8. What did said Eames state to you on the subject of the title to and incumbrance on said property, aside from what you wrote down in the application, if anything?

(Question objected to on the ground it assumes a fact.)

Ans. Nothing, except he wanted the policy payable in case of loss to Best & Sparks, mortgagees, as their interest might appear.

Int. 9. Did he tell you, or did you know, that there was only
187 an oral bargain, and no deed for this mill property?

(Question objected to as leading.)

Answer. He did not tell me; I supposed they owned the mill.

Int. 10. What, if anything, did he say as to their having or not having a deed for the mill property?

Ans. He said nothing.

Int. 11. What, if anything, did he say as to their having only an oral bargain for the mill property?

Ans. He said nothing.

Int. 12. What, if anything, did he say as to a mortgage on the mill property?

Ans. Nothing further than previously stated.

Int. 13. Was an amount of mortgage incumbrance mentioned by him; and if so, what?

Ans. There was six thousand dollars.

Int. 14. Did he say anything about any accrued interest on this mortgage incumbrance; and if so, what?

Ans. He did not say anything.

Int. 15. Did you know that interest had been accumulating on such incumbrance for several years prior to the application, and was then unpaid and in arrear to a large amount beyond the six thousand dollars?

188 (Question objected to on the ground that it is leading.)

Ans. I did not know it.

Int. 16. If you had known at the time of the application that com-

plainants had no deed for their mill property, only an oral contract, on which was due and in arrear a much larger sum than six thousand dollars, would such knowledged have influenced your course in connection with the application; and if so, what way?

(Objected to by complainants' solicit' as involving future action which none but Duty could tell, and irrelevant.)

Ans. It would have influenced my action. I would not have taken such an application.

Int. 17. Did you take such application relying upon the statements therein, as to incumbrance, as being true?

Ans. I did.

Int. 18. Did you ever issue policies on building' held upon mere oral contract, or did the Home Insurance Company, so far as you know?

Ans. I never did, and I suppose the company never did.

Int. 19. Was Mr. Cooley, the other complainant, present when this application was made out, and where was he at that time,
189 if you know?

Ans. He was not present. I think he was at Nokomis, in Montgomery County, about thirty-five or forty miles from Bunker Hill.

Int. 20. Then do I understand you to say that you did the business connected with the application in question with Eames alone, in the absence of Cooley?

(Objected to.)

Ans. I did.

Int. 21. What, if anything, was said between you and complainants, or either of them, as to a giving of credit for the premium on the insurance in controversy in this suit?

Ans. Nothing said about the premium at all.

Int. 22. What was your authority from the company with reference to giving credit for premiums?

Ans. I had no such authority.

Int. 23. Did you give credit to complainant, or agree to give credit, on this or any former occasion where insurance was taken?

(Objected to as having been gone over before.)

Ans. I never did, on his application or that of any one el e.

Cross-examination by Mr. Burnett:

190 Int. 1. What was the rule of payments in former policies issued to E. A. Cooley, one of complainants, on this same property?

Ans. Payment of the premium on delivery of the policy.

Int. 2. In your answer to interrogatory 8th you say that the insurance on this application was to be for the benefit of Best & Sparks, mortgagees, as their interest might appear; if so, what difference in your issuing a policy would it have made, to have known exactly the amount of such incumbrance?

Ans. It is a question the company required to be answered always, in an application, the exact amount of whatever encumbrance there might be on the property at the time it was insured. So far as I was concerned personally it made no difference, but the company required it.

JAMES A. BEACH

I, the above named J. Henry Truman, a notary public in and for Cook County, in the State of Illinois, do hereby certify that before the commencement of the examination of the said James A. Beach as a witness in the said suit between the said James B. Eames and Edwin A. Cooley, complainants, and the said Home Insurance Company of New

191 York, defendant, he, the said James A. Beach, was duly sworn by me to testify the truth in relation to the matters in controversy between the said parties so far as he, the said James A. Beach, should be interrogated concerning the same; that the said deposition was taken at the office of Paddock & Ide, No. 110 Dearborn street, in the city of Chicago, in the county of Cook aforesaid, on the 23d day of April, A. D. 1874, commencing at eleven o'clock a. m.; and that after the said deposition was taken by me, as aforesaid, the interrogatories and cross-interrogatories, and the answers thereto, as written down, were read over to the said James A. Beach; and that thereupon the said deposition was signed and sworn to by the said James A. Beach, before me, at the place and on the day last aforesaid.

[L. S.] J. HENRY TRUMAN,
Notary Public.

(Endorsed:) Filed April 27, 1874. J. A. Jones, clerk.

[Office of James A. Beach, notary public and insurance agent. Represents Home Insurance Co. of N. Y., Hartford of Hartford, Phœnix of Hartford, Andes of Cincinnati.]

Letter from Beach to Ducat.

BUNKER HILL, *Oct.* 12, '72.

A. C. DUCAT, Esq.,
Gen'l Agent:

192 DEAR SIR: I enclose app. for ins., which you have carried for two years, and was not renewed in Feb'y, because I asked 5½; (you were carrying it at 5%.) They now want to insure again. The other large mill in Stanton has lately burned, which is, I suppose, the reason. I have not learned the particulars, but some think the owners burnt it.

Yours, truly,

JAS. A. BEACH.

(Endorsed:) Filed June 1st, 1874. J. A. Jones, clerk.

[Home Insurance Company of New York, general agency for States of Illinois, Indiana, Wisconsin, and Minnesota. Arthur C. Ducat, general agent.]

Letter from Ducat to Beach.

CHICAGO, *Oct.* 14*th*, 1872.

JAS. A. BEACH,
Agent, Bunker Hill, Ills.:

DEAR SIR: We have yours of the 12th, with application of Eames & Cooley on flour-mill at Stanton.

Our present rate on this risk will not be less than 6½%, which is probably more than they will pay. If they wish a Home policy at that rate let us know, and we will send you ticket.

Truly, yours,

ARTHUR C. DUCAT,
Gen'l Agt.

193 The Phœnix will carry $3,000 at 6%; will you not do the same?

Yours, truly,

JAS. A. BEACH.

No; 6½% is our rate.

(Endorsed:) Filed June 1st, 1874. J. A. Jones, clerk.

[Office of James A. Beach, notary public and insurance agent. Represents Home Insurance Co. of N. Y., Hartford of Hartford, Phœnix of Hartford.]

Letter from Beach to Bissell.

BUNKER HILL, ILL., *Oct.* 26, 1872.

G. F. BISSEL, Esq.:

DEAR SIR: I enclose appl. for ins. I did not make a personal survey. I have been carrying the risk in the Home and Phœnix for two years, and they want this additional rate, 6¼. I did carry it before Chicago fire at 5¼.

Yours, truly,

JAMES A. BEACH.

(Endorsed:) Filed June 1st, 1874. J. A. Jones, clerk.

[Office of James A. Beach, notary public and insurance agent. Represents Home Insurance Co. of N. Y., Hartford of Hartford, Phœnix of Hartford.]

Letter from Beach to Ducat.

BUNKER HILL, ILLS., *Oct.* 28, 187 .

Hon. A. C. DUCAT:

194 DEAR SIR: Please send me a ticket for $4,000 ins. on app. No. 105, Stanton mill, @ 6¼.

Yours, truly,

JAS. A. BEACH, *Agt.*

(Endorsed:) Filed June 1st, 1874. J. A. Jones, clerk.

Dispatch from Beach to Ducat.

Blank No. 1. 253

THE WESTERN UNION TELEGRAPH COMPANY.

The rules of this company require that all messages received for transmission shall be written on the message-blanks of the company, under and subject to the conditions printed thereon, which conditions have been agreed to by the sender of the following message.

WILLIAM ORTON,
Pres't, New York.

26 D. O. H. PALMER, *Sec'y*

ANSON STAGER,
Gen'l Supt., Chicago, Ill.

[Dated Bunker Hill, Ills., 29th, 1872. Received at Chicago, Oct. 29, 11.20 a. m.]

To A. C. DUCAT,
Home Ins. Co.:

Do not return ticket for mill-insurance; it is burned.

JAS. A. BEACH.

10 collect 100.00.

(Endorsed:) Filed June 1st, 1874. J. A. Jones, clerk.

Afterwards, to wit, on the said 1st day of June, in the June term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Decree.

JAMES B. EAMES AND EDWIN A. COOLEY, partner' under name of Eames & Cooley,
v.
HOME INSURANCE COMPANY OF NEW YORK. } In chancery.

195 This day come the parties by their solicitors, and submit this cause to the court upon the bill, answer, amended answer, and proofs, and the court, being sufficiently advised in the premises, doth order, adjudge, and decree that the complainants' bill be dismissed.

It is therefore ordered and adjudged that the defendant recover of the complainants the costs and charges by it about its defence in this behalf expended, and that execution issue therefore as in judgments at law.

And thereupon complainants pray an appeal to the Supreme Court of the United States, which is allowed on their entering into bond to the defendant, within sixty days, in the penalty of five hundred dollars, with security to be approved by the court, and conditioned as the law directs.

And afterwards, to wit, on the sixteenth day of July, of the year last aforesaid, came again said complainants and filed in the clerk's office of said court their bond of appeal herein, which said bond is in words and figures following, to wit:

Supreme Court of the United States.

196 JAMES B. EAMES AND EDWIN A. COOLEY, partners under the name of Eames & Cooley,
vs.
HOME INSURANCE COMPANY OF NEW YORK. } In chancery.

Know all men by these presents that we, James B. Eames & Wesley Best, are held and firmly bound unto Home Insurance Company of New York, in the sum of five hundred dollars, to be paid to the said Home Insurance Company of New York, its successors and assigns; to which payment well and truly to be made we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this sixteenth day of July, A. D. 1874.

Whereas the above-named James B. Eames and Edwin A. Cooley, partners under the name and style of Eames & Cooley, have prosecuted an appeal to the Supreme Court of the United States to reverse a decree *a decree* rendered in the above-entitled cause by the circuit court of the United States in the southern district of Illinois:

Now, therefore, the condition of this obligation is such, that if the above-named James B. Eames and Edwin A. Cooley shall prose-
197 cute their said appeal to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation to

be null and void; otherwise the same shall be and remain in full force and virtue.

JAMES B. EAMES. [SEAL.]
WESLY BEST. [SEAL.]

B. F. BURNETT.

Approved:
S. H. TREAT,
Dist. Judge.

(Endorsed:) Filed July 16th, A. D. 1874. J. A. Jones, clerk.

198 Circuit court of the United States, southern district of Illinois, *ss:*

I, J. A. Jones, clerk of the circuit court of the United States for the southern district of Illinois, do hereby certify the foregoing one hundred and ninety-seven pages contain a true and complete copy of all the papers filed and proceedings therein had in a certain cause wherein James B. Eames and Edwin A. Cooley, partners under name of Eames and Cooley, are complainants, and The Home Insurance Company of New York is defendant, as truly and completely as the same appear of file and record in my said office.

In witness whereof I have hereunto set my hand and seal of said court, at Springfield, in said district, this twelfth day of October, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-ninth year.

[SEAL.] J. A. JONES, *Clerk.*

(Indorsement on cover:) No. 260. James B. Eames and Edwin A. Cooley, partners under the name and style of Eames and Cooley, appellants, vs. The Home Insurance Company of New York. S. Illinois C. C. U. S. Filed 18th December, 1874.

Afterwards, to wit, on the said 1st day of June, in the June term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Decree.

JAMES B. EAMES AND EDWIN A. COOLEY, PARTNER' under name of Eames & Cooley,
v.
HOME INSURANCE COMPANY OF NEW YORK. } In chancery.

195 This day come the parties by their solicitors, and submit this cause to the court upon the bill, answer, amended answer, and proofs, and the court, being sufficiently advised in the premises, doth order, adjudge, and decree that the complainants' bill be dismissed.

It is therefore ordered and adjudged that the defendant recover of the complainants the costs and charges by it about its defence in this behalf expended, and that execution issue therefore as in judgments at law.

And thereupon complainants pray an appeal to the Supreme Court of the United States, which is allowed on their entering into bond to the defendant, within sixty days, in the penalty of five hundred dollars, with security to be approved by the court, and conditioned as the law directs.

And afterwards, to wit, on the sixteenth day of July, of the year last aforesaid, came again said complainants and filed in the clerk's office of said court their bond of appeal herein, which said bond is in words and figures following, to wit:

Supreme Court of the United States.

196 JAMES B. EAMES AND EDWIN A. COOLEY, partners under the name of Eames & Cooley,
vs.
HOME INSURANCE COMPANY OF NEW YORK. } In chancery.

Know all men by these presents that we, James B. Eames & Wesley Best, are held and firmly bound unto Home Insurance Company of New York, in the sum of five hundred dollars, to be paid to the said Home Insurance Company of New York, its successors and assigns; to which payment well and truly to be made we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this sixteenth day of July, A. D. 1874.

Whereas the above-named James B. Eames and Edwin A. Cooley, partners under the name and style of Eames & Cooley, have prosecuted an appeal to the Supreme Court of the United States to reverse a decree *a decree* rendered in the above-entitled cause by the circuit court of the United States in the southern district of Illinois:

Now, therefore, the condition of this obligation is such, that if the above-named James B. Eames and Edwin A. Cooley shall prose-
197 cute their said appeal to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation to

be null and void; otherwise the same shall be and remain in full force and virtue.

JAMES B. EAMES. [SEAL.]
WESLY BEST. [SEAL.]

B. F. BURNETT.

Approved:
S. H. TREAT,
Dist. Judge.

(Endorsed:) Filed July 16th, A. D. 1874. J. A. Jones, clerk.

198 Circuit court of the United States, southern district of Illinois, *ss:*

I, J. A. Jones, clerk of the circuit court of the United States for the southern district of Illinois, do hereby certify the foregoing one hundred and ninety-seven pages contain a true and complete copy of all the papers filed and proceedings therein had in a certain cause wherein James B. Eames and Edwin A. Cooley, partners under name of Eames and Cooley, are complainants, and The Home Insurance Company of New York is defendant, as truly and completely as the same appear of file and record in my said office.

In witness whereof I have hereunto set my hand and seal of said court, at Springfield, in said district, this twelfth day of October, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-ninth year.

[SEAL.] J. A. JONES, *Clerk.*

(Indorsement on cover:) No. 260. James B. Eames and Edwin A. Cooley, partners under the name and style of Eames and Cooley, appellants, vs. The Home Insurance Company of New York. S. Illinois C. C. U. S. Filed 18th December, 1874.

SUPREME COURT OF THE UNITED STATES.

No. 260.

OCTOBER TERM, A. D. 1876.

JAMES B. EAMES *et al.*,

Appellants,

vs.

THE HOME INSURANCE COMPANY OF NEW YORK,

Appellee.

STATEMENT AND BRIEF FOR APPELLANTS.

J. C. ROBINSON,

Attorney for Appellants.

SUPREME COURT OF THE UNITED STATES.

No. 260.

OCTOBER TERM, A. D. 1876.

JAMES B. EAMES *et al.*,

Appellants,

vs.

THE HOME INSURANCE COMPANY OF NEW YORK,

Appellee.

Appeal from the Circuit Court of the United States for the Southern District of Illinois.

STATEMENT OF THE CASE.

This was a bill in Chancery, brought by appellants against appellee, in the Circuit Court of Montgomery County, Illinois, and by appellee removed to the Circuit Court of the United States, for the Southern District of Illinois.

The bill seeks a specific performance of a contract of insurance. The bill alleges, that the defendant, (appellee) was a corporation doing business as insurers against loss by fire, in Illinois; business transacted through general agent at Chicago, and local agents throughout the State. One of these local agents, James A. Beach, had an office and did business at Bunker Hill,

flouring mill and fixtures in said bill mentioned; admits that the general agent, in Chicago, Arthur C. Ducat, had such authority. Answer denies all the other material allegations of the bill. Replication to answer.

FACTS ADMITTED.

Page of Record 48 That, about October 12, 1872, complainants left with Beach, local agent at Bunker Hill, to be transmitted to Ducat, general agent at Chicago, application for insurance on a flouring mill, numbered 105, and marked "Exhibit 1"; that said Beach forwarded said application, by mail, to
49 Ducat, in a letter, dated October 12, 1872. Ducat received this letter on the 14th of October, 1872; on the same day, replied to Beach, that the rate would not be less than 6½ per cent., and saying, if plaintiffs wished a policy at this rate, to let him know, and he would send a ticket. This letter was returned to Ducat, by Beach, Oct. 18, 1872, with endorsement by Beach: "The Phœnix will carry $3,000 at 6 per cent, will you not do the same?" Across which Ducat wrote "No! 6½ is our rate." Oct. 18, 1872, Ducat wrote to Beach: "Yours received. Cannot go under 6½ per cent. on Eames & Cooley's flour mill." Oct. 25, 1862, complainants wrote to Beach accepting
50 the rate of 6½ per cent., and also enclosed their application for a policy in the Hartford Company. Oct. 26, 1872, Beach sent this application to agent of the Hartford Fire Insurance Company of Chicago, and Oct. 28, Beach wrote to Ducat to send him a ticket for $4,000 insurance on application No. 105, Staunton Mill at 6½. Oct. 29, 1872, Beach telegraphed Ducat: "Do not return ticket for mill insurance; it is burned." On same day
51 Ducat wrote to Beach, acknowledging receipt of Beache's

letter of 28th, requesting ticket on the Staunton mill, and saying that it came a few moments before the telegram, and adding "We came very near being caught, but am glad it is no worse. If we had not demanded the additional one-half per cent. we should have had $4,000 to pay." It is also agreed that on 28th of Feb., 1870, on application No. 71, the Home Insurance Company issued to E. A. Cooley, a policy of insurance marked "Exhibit No. 3," the written part whereof is set
52 forth in the same. On Nov. 16, 1872, Ducat, general agent of defendant, wrote to Beach, denying that his Company had ever accepted the risk, and saying "We did not know that they would accept our rate until after the mill was burned, and consequently could not have completed any contract."

OWNERSHIP.

Best and Sparks built the mill 1854; sold to Cooley, 1868, for $12,000; received $6,210; never gave a deed; was ready to do so at any time. Eames and Cooley, appellants, owned and occupied the mill at time of fire; had made $3,500's worth of improvements; told Beach all about appellants' title. See Best's testimony, page 14—answer to interogatories 4 and 11; E. A. Cooley's testimony, page 53—answer to interogatories 3 and 4, as to title and Beach's knowledge thereof.

Cooley sold half interest to Eames December 1st, 1870. Testimony of Eames, page 40—answer to cross-interogatory No. 2.

The testimony sustains the allegations of the bill not admitted in the agreed statement of facts, and the

94 Circuit Court, on hearing, dismissed the bill, from which decision of the court complainants appealed, and the question presented is, were the complainants entitled to the relief prayed for.

ASSIGNMENT OF ERRORS.

The court erred in rendering a decree dismissing the bill.

The court erred in not decreeing the relief prayed for.

AUTHORITIES.

Taylor *vs.* Merchants' Fire Insurance Co., 9th Howard, 390. Flanders on insurance, 384, and authorities there cited.

J. C. ROBINSON,
Attorney for Appellants.

SUPREME COURT OF THE UNITED STATES.

JAMES B. EAMES AND EDWIN A. COOLEY, partners under the style of EAMES & COOLEY, *Appellants*,

v.

THE HOME INSURANCE COMPANY OF NEW YORK, *Appellees*.

ARGUMENT FOR APPELLEES.

PADDOCK & IDE.

CHICAGO:
BULLETIN PRINTING COMPANY, 112 MONROE STREET.
1877.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1876.

JAMES B. EAMES AND EDWIN A. COOLEY, partners under the style of EAMES & COOLEY,
Appellants,

v.

THE HOME INSURANCE COMPANY OF NEW YORK,
Appellee.

Appeal from the Circuit Court of the United States for the Southern District of Illinois.

BRIEF OF APPELLEES.

May it please the Court:

The appellants filed their bill in chancery in the Circuit court of Illinois, for the county of Montgomery, and afterwards the appellees, under the statute, removed the cause for trial to the United States Circuit court for the Southern District of Illinois. It was finally heard before his Honor Samuel H. Treat District Judge, upon bill, answer, replication and proofs and the court, upon such hearing, entered a decree dismissing the bill. The present appeal was taken by the complainants, and calls in question the propriety of that decree.

The general object of the bill is the enforcement of the specific performance of an alleged contract between the defendants and the complainants, the subject matter of which

was the insurance against fire of the flouring mill premises of the complainant situated in the village of Staunton, Macoupin county, Illinois. The amount of insurance alleged to have been agreed upon, was four thousand dollars ($4,000.00), and it appears from the bill and the proofs that the flouring mill premises were destroyed by fire on the 28th of October, 1872, at a loss to the complainants of at least ten thousand dollars ($10,000.00). The general scope of the answer is to deny that any such contract was made and to claim that the negotiation between the parties before the fire in question had progressed no farther than the stage of preliminary inquiry.

In their bill, Eames and Cooley state that one James A. Beach was the agent for defendants at Bunker Hill, Macoupin county, Illinois; that he was authorized to act for appellees *in making contracts* of fire insurance; that Eames and Cooley were the owners and occupiers of the steam flouring mill in question on and prior to Nov. 1, 1872; that for two successive years prior to Sept., 1872, defendants had insured the mill to the amount of thirty-five hundred dollars ($3,500.00) at five per cent. premium; that *upon the expiration of such insurance, the complainants on or about Oct.* 1, 1872, made application to Beach for contract of insurance and policy on the mill for another year for the sum of four thousand dollars ($4,000,00), at the rate of five per cent. premium; that to this application complainants, after several days, were informed by Beach that defendants would insure the mill at 6½ per cent., "as applied for," to the amount of $4,000.00; that on receiving this information complainants requested Beach to write to the general agent at Chicago for a less rate than 6½

per cent.; that to this the general agent replied by letter, dated October 18, 1872, that they could not go under six and a half per cent.; that on the 25th day of October, 1872, complainants wrote to Beach accepting defendants' offer at 6½ per cent. on $4,000.00, and made out and sent with such letter of acceptance *an application such as said agent Beach had directed*, and that such letter of acceptance and application were received by Beach "*as a compliance on the part of complainants to the offer of defendants previous to that time made*," and upon said 25th day of October, 1872, were remailed to the general office at Chicago for policy to issue thereon insuring complainants' mill, etc., to the amount of $4,000.00, for *one year from date of said application*, from loss by fire, at the rate of 6½ per cent. premium; that said letter was received at the general office at Chicago on the 26th day of October, 1872; that on the night of October 28, 1872, the mill was destroyed by fire; that on the morning of the 29th of October complainants gave notice to Beach of the loss, offered to pay the premium, and demanded the policy; that on the 13th of January, 1873, complainants presented to Beach proofs of loss, again offered to pay the premium on $4,000.00 at 6½ per cent., and demanded a policy, the agent refusing to receive the premium or give the policy. Prayer for issuance of the policy and general relief.

This bill, as we remark in passing, contains no averment that the defendants agreed to give Eames and Cooley a credit upon the premium; nor is there any claim or proof of payment or tender of premium at any time before the loss in controversy. It is said, however, in the bill that Beach made

the prior contracts of insurance referred to, and that, on these occasions, he never asked for the premium money until after delivering the policies.

The answer of defendants admits that they are doing a business of fire insurance in Illinois; that they had sundry agents in various parts of the State, and a general agent, Arthur C. Ducat, whose office as such agent was at Chicago; that Beach was agent at Bunker Hill, authorized to issue certain kinds of policies, but deny that Beach was authorized to make any contract or policy touching the class of risks to which the flouring mill belonged; that Ducat, as such general agent, was the only person representing defendants in Illinois who had, or claimed, authority as to such risks; of which complainants had prior to, and at the time of, the transactions mentioned in the bill, actual notice; that the flouring mill and its fixtures and machinery were not an usual and ordinary risk, but such an extraordinary risk as required to be authorized, if authorized at all, either at the home office of the Company, in New York, or at the Chicago general agency, upon formal written application, diagram and survey, signed by the party seeking insurance; and that in all such cases the policy of insurance, when issued, referred to the aforesaid application, and made it part of the policy, and provided, in substance, that such application and survey should be considered a part of the contract of insurance, and a warranty upon the part of the assured, and that any false representation or concealment in such application was, in such policy, expressly stipulated to avoid the same; whereof said complainants had full notice at the time of the negotiations in question.

Defendants also deny that at the time in question there was any course or usage of dealing on the point of giving credit or otherwise between respondents and complainants; deny that there was any insurance in the company of respondents later than February, 1872; deny that complainants ever paid or offered to pay any premium or other consideration for the supposed insurance mentioned in the bill; further deny that respondents ever undertook or agreed to insure the mill for another year, or for any further period of time, or that there was any insurance or agreement to insure the property by respondents at the time of the fire in the bill mentioned.

The answer further sets up that the only application ever made to respondents by complainants after the expiration of the former policy of insurance in February, 1872, and the only one upon which any insurance would have been effected had respondents consented to write the insurance claimed in the bill, and the only one referred to by complainants during such negotiations as were had touching insurance upon the property in question, was false and untrue, in this, that in and by such application the said complainants claimed and stated that they owned said premises in fee, subject to a certain mortgage lien for $6,000.00, and that they then had other insurance thereon to the amount of $4,000.00 in the Phœnix of Hartford, whereas they had no such insurance in such company, and never after procured the same in such or any company, and had then made an incumbrance of lease on said premises, as respondents are informed, which was a serious and material violation of the warranty in the application.

By the amended answer (found on page 11, top), the de-

fendants specify in detail the false statements alleged to have been made in the application, and show that the title of the complainants to the mill property was only an equitable one, as vendees of the owners of said property, and that there was due upon the purchase money to the vendors and owners, a sum greatly in excess of the $6,000.00 mentioned in such application, and as much as $8,000.00, for which last named sum the vendors had a lien upon said premises, not as mortgagees, but as vendors. And respondents admit that if any agreement had been made as alleged in said bill, which respondents, as in their former answer, denied and still deny, the complainants are precluded by reason of false statements in the application concerning the title and incumbrance; that such statements were calculated to mislead respondents in a very material matter, namely, the value of the interests of complainants in the property, and the rate of premium to be charged thereon, and the question of insuring said risk at any rate, or under any circumstances, and they show that not until the taking by complainants of the evidence of one Wesley Best, at Litchfield, in this cause did they learn of the facts above set forth; they repeat that the said supposed contract was never consummated or agreed upon in the minds of the supposed parties thereto.

POINTS FOR APPELLEES.

I.

The main question is one of fact. For the appellees, we say that the proofs fail to establish the contract set up in the bill.

In the view taken by us of the proofs of the case, the court below could not have found otherwise than he did find upon the question of fact. It seems to us that the entire evidence in the case points conclusively to the truth of the answer of the defendant to the effect that at the time of the fire in controversy there was no completed contract for insurance in existence between the parties.

The complainants paid no premium. They held no policy. There was no credit. It seems to be sought, in the bill, to convey the impression that there had been a previous dealing between the complainants and the defendants upon two former occasions of insurance, and that, upon those occasions, the defendants had given credit to the complainants for the premiums upon such insurance, delivering the policies in advance and collecting such premiums after delivery. These suggestions are quite argumentatively made, and we suppose them rather informal, but they could have had no other purpose than to account, upon the pleadings, for the clear and striking fact that no premium was ever paid, and none offered until after the loss.

The time assigned in the bill for the date of the application in controversy in the present suit, namely, "upon the expiration of the last named policy," would imply that as soon as the former policy in the Home Insurance Company had expired the complainants made application for renewed

insurance in the same company, and would further imply that the dealing was not only continuous, but between the same parties. It is also stated in the bill, in the same connection, that Beach was the person "with whom the contracts were made" on the former occasions referred to, but the fact is, that these allegations are utterly at variance with the documentary proofs and the evidence of the complainants' own witnesses, adduced upon the hearing. Referring to the deposition of Beach, taken by complainants (page 24, top), and the documents themselves in detail (set forth on page 51, top), it becomes apparent: first, that this former insurance had been effected, not by Eames and Cooley, the complainants, but by Cooley alone; second, that it had expired about eight months previous to the inception of the negotiations which are in controversy in the present case; in other words, that the insurance alluded to in the bill as a part of this supposed course of dealing, expired on the 14th of February, 1872, while the application now in controversy bears date on the 12th of October, 1872.

We are therefore justified in saying, upon the proofs in this cause adduced by complainants, that the present complainants had no prior business relations with the Home Insurance Company upon which to base a claim for credit in the present instance. When we look into the proofs upon this question of credit to Cooley upon the prior insurance, we find that Beach (page 24, top) testifies that this prior insurance was issued to Cooley, one of the complainants, upon his application; that the witness made no contract, and that the premium was paid to the witness before delivery of

the policy (page 36, top); and witness further states that the first year he got the money on delivery of the policy; the second year Mr. Cooley gave his note to the bank of which witness was cashier, for the amount of the premiums, which note the bank discounted and furnished the money to pay for the policy, which was equivalent to cash for the policy. It is true that Cooley, one of the complainants, afterwards testifies (page 53, top) that the defendants carried a risk on the flour-mill for E. A. Cooley; that the premiums were paid by Cooley to Beach; application made, policy issued, and premium paid on the last of the month; that Beach did not claim the premiums until the last of the month, and not until he made his report. We believe the testimony of Beach and Cooley is the only testimony upon this point, and it leaves the allegation unproved, to say the least.

THE APPLICATION TO THE HOME.

The bill is drawn upon the supposition expressed in the form of direct statement, that on the 25th of October, 1872, complainants wrote to Beach accepting the alleged offer of the defendants referred to, and made out, and sent with such letter of acceptance, an application such as said agent Beach had directed, and which letter of acceptance and application was by the said Beach received as a compliance on the part of complainants, to the offer of defendants previous to that time made. Complainants having seen fit to confine themselves to this specific allegation, were bound to support it in proof upon the hearing. There is no evidence in the case that on the 25th of October, 1872, or any other day, the complainants wrote to Beach, such a letter as alleged in their bill,

or any letter inclosing an application to the Home Insurance Company. This part of the bill is an evident confusion of the application of 25th of October, 1872, which was enclosed in a letter of the same date, and which was made not to the Home Insurance Company, but to the Hartford Fire Insurance Company with that to the Home sent nearly a fortnight before.

The letter is as follows, (p. 52 top.)

STAUNTON, ILL., *October* 25, 1872.

MR. JAMES A. BEACH, Bunker Hill, Ill.,

Dear Sir :—I believe I have answered all the questions necessary, and to the best of my knowledge; 6½ per cent. is pretty heavy, but I guess we will have to stand it, as I don't know where we can do any better at present.

Yours, etc.

(Signed) EAMES & COOLEY.

It is upon the above ambiguous and somewhat contingent *guess* that the complainants rely as supporting the allegation of the bill under discussion.

It is shown in the testimony that Eames and Cooley, at this time had made application to several companies upon the subject of insurance, the Home Insurance Company among others. They were evidently disposed to make inquiries in various quarters, for the purpose of ascertaining with what companies they could most advantageously deal. Mr. Beach's testimony (page 26) and the stipulation of the parties (page 50) show that the letter of October 25, just quoted, enclosed the Hartford application, and not that of the Home. The first sentence of the letter in which reference is made to an-

swering all the questions necessary, must obvious y have referred to those questions which were contained in the Hartford application, that being the matter in hand. An argument may be framed upon the generality of the next sentence with regard to 6½ per cent. being pretty heavy, that in the use of such language the writers of the letter intended to refer to the Home application, but we submit that a more natural reference would be to the Hartford application. As to this matter, Mr. Beach to whom the letter was addressed, was called as a witness by the complainants,and testifies (page 26), that he understood the 6½ per cent. in the letter to allude to the application enclosed. He thought it alluded to the Hartford policy, he also might say that he supposed that the writer was willing to pay the rate asked by the Home, which was the same as the Hartford, and he afterward wrote to the Home office in Chicago, for a permit to write a policy. He is further asked why he had said that the 6½ per cent. in the letter of October 25, alludes to the Hartford application and answers, because that letter enclosed the Hartford application, and did not mention any company.

Mr. Eames' version of theaffair (page 37 top) is that Mr. Beach wrote him a letter, stating that he had received an answer from the Home Company, and that they would not take the risk for less than 6½ per cent. This letter he says he received on or about the 22nd of October, 1872, by mail at Staunton. The letter was burned in the mill. He says the letter from Beach contained an application to the Hartford, partly filled up by Mr. Beach, and sent to him (Eames) to answer questions. That application he says was for two thou-

sand dollars, and the rate fixed by Mr. Beach, was six per cent. He filled it up and sent it, and mailed it to Mr. Beach Friday, October 25th, 1872.

The written application by which appellants opened negotiations with the Home Insurance Company was made October 12, 1872, bore date on that day, was forwarded by the general agent, Beach, from Bunker Hill, and reached the Chicago general agency on the 14th of October, 1872. The correspondence between the general agency and Mr. Beach, with reference to the subject, was necessarily in writing, and is before the court. The communication relied upon by the appellants as closing the negotiation by an acceptance, is also in writing, and bears date October 25, 1872.

On page 48 of the printed record, are found embodied in the stipulation of counsel, a series of documents relating to the transaction commencing with the letter of Beach of October 12, 1872, to Ducat, enclosing the Home application and concluding with the letter of Mr. Ducat of October 29, 1872, to Mr. Beach. With the explanatory admissions of counsel they are as follows:

[Office of James A. Beach, Notary Public and Insurance Agent, Represent Home Insurance Co. of N. Y., Hartford, of Hartford, Phœnix of Hartford, Andes of Cincinnati.]

"BUNKER HILL, Ill., *October* 12, 1872.

"A. C. DUCAT, ESQ., Gen'l Agt.,

"*Dear Sir:*—I enclose app. for ins. which you have carried for two years, and was not renewed in Feb'y because I asked 5½ (you were carrying it at 5 per cent). They now want to insure again. The other large mill in Staunton, has

lately burned, which is, I suppose, the reason. I have not learned the particulars, but some think the owners burned it.

"Yours truly,

(Signed) "JAS. A. BEACH."

That on the 14th October, 1874, said Ducat received said letter of Beach, and its enclosure, and wrote to said Beach in respect thereto a letter, whereof the following is a copy:

[Home Insurance Company of New York, General Agency for State of Illinois, Indiana, Wisconsin, and Minnesota, Arthur C. Ducat, General Agent.]

"CHICAGO, *October* 14, 1872.

"JAS. A. BEACH, Ag't, Bunker Hill, Ill.,

"*Dr. Sir*:—We have yours of the 12th, and application of Eames & Cooley on flour mill at Staunton. Our present rate on this risk will not be less than 6½ per cent., which is probably more than they will pay. If they wish a Home policy at that rate, let us know, and we will send you ticket.

"Truly yours,

(Signed) "ARTHUR C. DUCAT,

"*Gen'l Agent.*"

Which letter was returned to said Ducat by mail by said Beach, October 18, 1872, with the endorsement in the handwriting of said Beach: "The Phœnix will carry $3,000 at 6 per cent.; will you not do the same?

"Yours truly,

"JAMES A. BEACH."

Across which is endorsed in pencil October 18, 1872, in the handwriting of said A. C. Ducat:

"No; 6½ per cent. is our rate."

On October 18, 1872, said Ducat mailed to said Beach a letter, of which the following is a copy:

[Letter head of Chicago General Agency.]

CHICAGO, ILLS., *Oct.* 18, 1872.

"JAMES A. BEACH, *Agt.*, Bunker Hill, Ill.:

"*Dear Sir:* Yours received. We can not go under 6½ per cent. on Eames & Cooley flour mill.

"Truly yours,

(Signed.) "ARTHUR C. DUCAT,

"Gen'l Agent."

On or about October 25, 1872, said Eames & Cooley mailed at Staunton a letter to said Beach, of which the following is a true copy:

"STAUNTON, ILL., *Oct.* 25, 1872.

"MR. JAMES A. BEACH, Bunker Hill, Ill.:

"*Dear Sir:* I believe I have answered all the questions necessary and to the best of my knowledge; 6½ per cent. is pretty heavy, but I guess we will have to stand it, as I do not know where we can do better at present.

"Yours, etc.,

(Signed.) "EAMES & COOLEY."

Inclosed in which letter of said Eames & Cooley of October 25, 1872, was an application to the Hartford Fire Insurance Company, bearing date October 25, 1872, marked "Exhibit No. 2," to be exhibited and read as evidence on the trial in said case.

On October 26th, 1872, said Beach mailed to the General Western Agent of the Hartford Fire Insurance Company, at

Chicago, a letter enclosing said last named application, and bearing date on said October 26, a copy of which is as follows:

[Office of James A. Beach, Notary Public and Insurance Agent. Represent Home Ins. Co. of N. Y., Hartford of Hartford, Phœnix of Hartford.]

"BUNKER HILL, *October* 26, 1872.

"GEO. T. BISSELL, ESQ.,

"*Dear Sir:* I enclose appl. for ins. I did not make a personal survey. I have been carrying the risk in the Home and Phœnix two years, and they want this additional rate 6½. I did carry it before Chicago fire at 5½.

"Yours truly,

(Signed) "JAMES A. BEACH."

On October 28, 1872, said Beach mailed a letter to said Ducat, of which the following is a true copy:

[Beach's letter head.]

"BUNKER HILL, *October* 28, 1872.

"HON. A. C. DUCAT,

"*Dear Sir:* Please send me a ticket for $4,000.00. INS. on appl'n No. 105, Staunton mill, @ 6½.

"Yours truly,

(Signed) "JAMES A. BEACH."

October 29, 1872, said Beach sent telegraphic message to said Ducat, of which the following is a copy:

[Dated Bunker Hill, Ill., 29, 1872; received at Chicago, October 29, 11:20 a.m.]

"To A. C. DUCAT, *Home Ins. Co.:*

"Do not return ticket for mill insurance; it is burned.

"JAS. A. BEACH."

October 29, 1872, said Ducat mailed to said Beach a letter, of which the following is a copy:

[Home Insurance Company, of New York, general agency for States of Illinois, Indiana, Wisconsin and Minnesota. Arthur C. Ducat, general agent.]

"CHICAGO, ILL., *October* 29, 1872.

"JAS. A. BEACH, *Agt. Bunker Hill, Ill.*,

"*Dear Sir:* Yours of the 28th, requesting ticket on the Staunton mill came duly this morning, and in a few minutes your telegram arrived announcing the burning of the mill. We came very near being caught, but are glad it is no worse. If we had not demanded the additional ½ per cent., we should have had $4,000.00 to pay.

"Yours truly,

(Signed) "ARTHUR C. DUCAT."

COMPLAINANTS' APPLICATION SPECIFIED NO TIME FOR THE BEGINNING OR ENDING OF THE RISK.

All the negotiations in controversy grew out of and related to the written application of October 12. It seems to be taken for granted in the bill that this application fixed the time of the beginning and ending of the risk. Such is not the fact, the fact being that the application makes no mention when the risk is to begin nor its duration. Up to the time of the fire, that point had not been settled or discussed. It was never settled. The negotiations were incom-

plete. This application is set out on page 56, and an inspection will show that it is silent as to the duration of the risk in question. Had the minds of the parties met on every other point, there could of course have been no contract of insurance without further negotiation as to this vital element of time. Mr. Ducat testifies (page 86), that his company had no information as to the duration of the insurance applied for aside from what was contained in the application, which failed to specify such duration.

We cite on the point of duration of risk as a necessary element of a fire insurance contract:

Strohn v. Ins. Co., 37 Wis. 625.
Church v. Ins. Co., 28 N. Y. 153.
Tyler v. Ins. Co., 4 Robertson 151.

In *Strohn v. Ins. Co.*, the Wisconsin court say: "Com-"stock says the rate of premium was to be 1¾ per cent.; "yet this, it is admitted, had reference to the annual rate. But "the more serious defect in the contract is that no time was "fixed for the continuance of the risk. Suppose a bill in "equity had been filed, as is sometimes done, to specifically "enforce the performance of the contract to issue a policy. "How could the court determine the essential elements of the "contract which it was called upon to enforce?"

In *Church v. Ins. Co.*, the New York Court of Appeals approve the definition that to constitute a valid contract of insurance it is essential "that the minds of the parties should "meet as to the premises insured and the risk; as to the "amount insured; as to the time the risk should continue; "and as to the premium."

Tested by these authorities and on principle there was no contract between the parties.

Mr. Beach (page 28) testifies that at the time in question he had no authority to write a policy on risks like that in question, without a permit from the company. He says complainants were aware at that time of the nature of his authority and he never claimed an authority beyond what he had described; he says the policies which had expired in February previous had been issued under authority from the general office upon an application forwarded to that office, and issuance to him of a permit for that purpose. As to the nature of the permit referred to by Beach, and, also, by Mr. Ducat (see page 52),* the court will perceive that upon its face it is the authorization of a risk to be described in the blank portions of the permit or ticket, and provides that such risk is not binding until the issuing and delivery of the policy by the agent. Mr. Beach testifies (page 28) that he did not issue policies on the class of risks in question without having such a ticket from the general agency; that he would not have delivered the policy in advance of payment of the premium, and that there was no custom or usage of dealing between complainants and the company, varying the rule of prepayment of premium. He also states (p. 29) that the duration of the policy would have had to be settled upon receipt of the ticket; he says further that at the time in question he neither had, nor claimed, any authority to give credit for premiums upon the transaction in controversy. Page 27 Mr. Eames says that, aside from the facts stated in the application of Oc-

* On page 85 is a typographical or clerical error. In the answer to Int. 9, "promise" should read "permit," as the context and the exhibit of the ticket, p. 52, will show.

tober 12, he had no information as to the nature of the risk, ownership of the property, or other circumstances connected with the transaction. He says it was a special, and not an ordinary, hazard; that the mill was ten miles from his office, and that he had made no personal survey.

On page 30 he states that when he informed complainants that the general office had refused to change the rate from 6½ to 6 per cent, Mr. Eames remarked that 6½ was too high, and that he understood that remark as a dropping of the matter at the time, and nothing more was said until he receved Mr. Eames' letter, a few days afterwards, and the letter of October 25. He states that he had no other communication with the complainants, after that in regard to insurance in the Home, either verbally or by letter. Mr. Beach was examine as a witness on behalf of the complainants, and testified with apparent candor and intelligence. It is under the circumstances pretty strong evidence that the complainants had dropped the negotiation prior to the 25th of October, so far as the Home Insurance Company was concerned. In this Mr. Beach's testimony conflicts with the version of Mr. Eames, or rather with Mr. Eames' construction of his own letter of October 25, when he says that the latter part of that letter alludes entirely to the Home Insurance Company, and that it was an acceptance of the proposition of the Home. Mr. Beach states that he had previously told the complainants (page 33, top) that he supposed the Hartford would also ask 6½ per cent.; this seems to us a natural remark when it is considered that the underwriters would probably compare notes, and that Mr. Beach was the agent of both companies. Mr. Beach tes-

tifies that upon the strength of the latter part of the letter of October 25 he changed the figure 6 in the Hartford application to 6½. It is argued in the nature of the questions put to Mr. Beach by complainants, that inasmuch as he received back the Hartford application with 6 per cent. as the rate offered, he had no right to understand the expression of 6½ in the letter of October 25th as referring to any company but the Home. His testimony just quoted explains his reasons for a different understanding, and to our mind it is quite clear that the 6½ did refer to the Hartford application, which was enclosed in the letter, and which the other part of the letter confessedly referred to, because, in the very sentence under discussion, Eames says, "I do not know where we can do any better at present." If at that time he had hopes of getting insurance at six in the Hartford he could hardly have said he did not know where to do better than 6½.

We argue, therefore, that Mr. Beach testifies truly, and that he had, previous to the writing of the letter of the 25th of October, impressed upon the minds of Eames and Cooley that they could not expect the insurance from the Hartford at any less than 6½ per cent., which rate had been mentioned by the Home as the proper one. This we submit as the more reasonable construction, and the more probable meaning of the letter of October 25th, but we wish also to submit that no court of equity, in a matter of specific performance, could find for the complainants upon such slight evidence as offered in favor of the present bill upon this question. It does not come up to the measure of that clear and cogent proof which is required in such a case, if, indeed, it has any tendency to prove the issue.

We understand from the evidence in this case that Eames and Cooley, the complainants, who were aware of the precise nature of Mr. Beach's authority, and opened the negotiation through him with the Chicago general office, subject to the right of Mr. Ducat, as the general agent, to keep the entire dealing in a revocable and incomplete condition until the actual delivery of the policy at which time the premium was to be paid. The court will notice that the communications of Mr. Ducat were not with the complainants, but with Mr. Beach. The complainants were informed that these communications were in writing, and were always put upon inquiry as to their nature. Mr. Beach seems not to have held himself out to the complainants as being authorized to bind the company by contract, on this risk and for all that appears in the case, correctly informed the complainants whenever asked what Ducat had written to him upon the matter in question. It sems to us reasonable and proper, upon the evidence, to say that the letter of October 14, 1872 (page 49), indicates the purpose of Mr. Ducat to keep his company from incurring any liability or risk until after he should have sent to Beach the "ticket" referred to, and the issuance by Beach in pursuance of such ticket of a policy to the applicant. All he proposed to do in case the rate named proved satisfactory was to send Beach such a ticket, and he testifies in answer to questions by complainants' counsel (page 87) that he was not positive that he would have issued a permit even if he had not learned of the burning of the mill. He says: "I sometimes sign permits, and change my mind before they are made, when I get to thinking of it at my leisure; these negotiations had not improved my opinion of this hazard."

THE CONTRACT IS *prima facie*, INCOMPLETE IF NO DELIVERY OF POLICY AND NO PAYMENT OF PREMIUM. He who claims under it must show that it was the intention of the parties that it should be operative notwithstanding these facts.

May on Insurance, p. 57, and cases cited.

IF A CONTRACT WAS PRIMA FACIE PROVED, THE COURT OUGHT NOT TO COMPEL ITS SPECIFIC PERFORMANCE. THERE WAS A MISAPPREHENSION AS TO THE AMOUNT OF INCUMBRANCE.

It was argued on behalf of the defendants below and mention may be made of the same matter now, that, supposing the court were able to find that the minds of the parties had met in a completed contract, nevertheless relief in the present case under the circumstances should be denied. If a policy had been issued, it would have been such a policy as was in use in the ordinary business of the company. The form of such policy (issued to other parties than complainants.) is found upon page 60. The application of October 12, contained material false statement, if not in respect to title, at least in respect to the amount of incumbrance upon the interest of the applicants. It is possible that the equitable ownership enjoyed by Eames and Cooley would have satisfied the statement of the application as to title, but the statement in that application of the amount of incumbrance at $6,000.00, is upon the proofs a gross under-statement, and materially misdescribed the value of the equity of redemption of the applicants. By the policy, if one had been issued, every statement of the application would have become a warranty, and a misstatement, whether material or otherwise, would have avoided the

contract upon the well known doctrine appertaining to warrantie in contracts of insurance. But in this matter of incumbrance we have a serious and material misstatement of one of the essential facts in the dealing. It would be inequitable, as it seems to us, if every other question in this case were settled in favor of the complainants, to decree that these defendants should issue a policy to the complainants upon an application containing such misstatements.

Wesley Best's first deposition is found on page 46, his second deposition is on page 14. In his first deposition Mr. Best, who was one of the vendors of the mill and owners of the lien referred to in the application, testified that the property was sold to Cooley for $12,000; that $4,000 was paid down, the balance to be paid with interest at ten per cent; that the vendors were afterwards paid either $2,000 or $2,200 about a year afterwards. On cross-examination, he testified that Cooley was to pay ten per cent. interest on the deferred payments; that the remainder of the purchase money was unpaid, amounting to $6,000 *and interest;* that the date of the purchase was either four or five years previous to the time he gave his testimony, which was December, 1873. It consequently appears from Best's first deposition, that at the date of the application *there were nearly three or four years accrued interest at ten per cent. upon the* $6,000 *unpaid purchase money.*

In his second deposition, Mr. Best says the interest was six per cent., and since it became due, he had told Mr. Cooley that if he would pay the principal, he would not charge him any interest; did not recollect on this second examination,

that he had testified that the debt on the mill included interest from the date of sale to the present time, at ten per cent. per annum. On further examination, he testifies (p. 18) that he disremembered saying that the indebtedness on the mill was $6,000 and the interest, but supposed he stated that; he presumed that he did say that the interest was ten per cent., but thought on the second examination that he was mistaken, that it was six per cent. instead of ten.

THERE WAS ALSO A MISAPPREHENSION AS TO OTHER INSURANCE.

By the application the complainants stated other insurance in the Phœnix at $4,000.00. Under the circumstances this, if not a warranty, at least amounted to an undertaking that the Home should have a solvent co-insurer to that amount from whom to claim contribution in case of partial loss. Having held out this expectation, and having (p. 24, top) refused to take a Phœnix policy of $3,000, which would have partly fulfilled it. we submit that the complainants had no right to consider the Home as bound until the statement was substantially made good. Even Eames at no time appears to have had in his mind the idea of holding the Home as a sole insurer, until after the event. The risk of a sole insurer is, of course, very different from that assumed by one of several insurers. So long as there stood upon the correspondence this promise of other insurance, held out by complainants, and never fulfilled, it is either a case of mutual misunderstanding or such an understanding as should not be enforced in a court of equity.

We have endeavored to show that there was no contract;

that the form of the policy applied for and the other documents involved pointed to a mutual understanding that no risk attached prior to payment of premium; that there was no waiver of prepayment; that no time was fixed for the duration of the hazard, and that in other details the negotiation was revocable and incomplete.

We have had, as it has happened, but little time since receiving the printed record in which to make the present brief, but we trust that upon examining the evidence referred to, the court will have no serious difficulty in perceiving good reasons for the affirmance of the conclusion arrived at by the learned judge who heard the cause below. We understand the merits of the matter to turn rather upon questions of fact than those of law, and confidently suggest that great weight is to be given to the findings and decree of the court below under such circumstances.

Respectfully submitted,

GEO. L. PADDOCK.

GEO. O. IDE.

Bulletin Printing Company, 112 Monroe Street, Chicago.